STATE LEGISLATION FOR BETTER LAND USE

A Special Report BY AN INTER-BUREAU COMMITTEE OF THE UNITED STATES DEPARTMENT OF AGRICULTURE

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Foreword

ALL THREE levels of government—local, State, and Federal—are now concerned with the common problem of maintaining and improving our basic soil resources. The success of the programs of each affects the success of the programs of the others.

At the State level, work is now proceeding in a variety of vital categories of land use. In the course of the last decade, a number of States have pioneered the field of rural zoning. Others have been engaged in definition of rights under their water laws. More recently, a new instrument of local initiative, to carry out measures of soil and water conservation, has been provided for the farmers of most States in the soil conservation district. The close relationship between tenancy and soil exhaustion has led various States, in the Corn Belt and the Cotton Belt alike, to consider the conditions under which land is rented. Since the property tax on farm land is the main source of support of the various units of government in rural areas, interest in good land use and interest in local-government structure have increased together. States are reviewing procedure for the treatment of rural tax-delinquent lands and making arrangements for purchase of certain tracts and the development and management of publicly owned areas. Forest management, with its direct effect upon run-off, is immediately related to land use; various States are turning attention to management for sustained yield on private forest lands at the same time that the whole subject of management of public and private forests is being canvassed by a Congressional committee.

In all of the 48 States, legislation on at least some of these topics is now on the statute books. Each law has a single specific object; with regard to that particular object, it is complete in itself. But at the same time it is a part of a larger whole; taken together, the various laws on these topics in force at a given time form the legal framework for good land use under the conditions of the State where they are found.

In some of the States where statutes fostering good land use are now on the books, alteration, redefinition, or expansion of their purpose is under consideration. In other States, where no laws are now in effect on some of the topics just mentioned, public interest in one or more of these problems has reached a stage where legislative action seems imminent.

This report has been prepared in response to that interest. In each of its chapters, available material is analyzed in the same order, answering the questions: What are the outlines of the problem that has led the citizens of certain areas to take action through government? What are the main provisions of the statutes so far adopted? What considerations pertaining to policy, constitutionality, administrative efficiency, does this experience show to be pertinent to the drafting of a satisfactory statute?

The problems reviewed under these headings are State problems. But their successful solution will go far to solve some of the national problems with which this Department is concerned. The collection of material contained in this report is therefore offered as the Department's contribution to a related work that closely parallels its own, but a work in which initiative lies with the States.

CLAUDE R. WICKARD,
Secretary of Agriculture.

Acknowledgment

MANY MINDS in the United States Department of Agriculture contributed to this report. The study was made under the general direction of an Interbureau Committee. Much of the research and analytical work underlying the report was conducted by members of the Land Policy Division in the Office of the Solicitor and the Division of Land Economics of the Bureau of Agricultural Economics. Special credit is due the members of these two agencies and the various subcommittees whose names appear at the beginning of each chapter.

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Introduction: What This Report Is About

THIS REPORT discusses certain outstanding items of State land use legislation that are essential in a well-rounded program for promoting wise land use in the United States. Every student of land use policy knows that for constitutional reasons, for administrative reasons, and for reasons inherent in our democratic system, government in the United States cannot do its part in enabling and helping the American people to achieve a prosperous, permanent, conservational agriculture through national legislation alone. The National Government, the 48 State governments, and the local governments of counties, soil conservation districts, water control districts and the like, each needs to legislate within its proper sphere if the necessary institutional tools for bringing about and maintaining the best land use are to be provided.

Within the last 15 years, and particularly within the last 8 years, a large and significant development has taken place in national agricultural legislation. These same years have also seen a marked expansion in the adoption by State legislatures of land use programs that only the several States can constitutionally adopt, and this process is likely to continue. In this publication is collected economic, administrative, and legal material bearing upon the foremost measures for State land use legislation now being widely discussed.

Some vehicle for pooling the group wisdom developed by States in their land use programs is desirable. Part of this wisdom is now exchangeable through comparison of existing laws. The rural-zoning laws in force in nine States provide a rather extensive pattern in the field of zoning. The New Mexico Ground Water Law provides a pattern in its field. Statutes in force on some of the other topics here discussed also present well-worked-out patterns. But copying of legislation from State to State may have its pitfalls; the first statute that happens to be adopted on a particular topic may not be an adequate version of the necessary law. On the other hand, no model law is likely to be suitable in all of its provisions for a particular State—for instance, State procedures for public acquisition of tax-delinquent lands must obviously take account of the complex legislative pattern that already exists in the particular State.

What those engaged in the preparation of a land use program are likely to find most useful is therefore a comparative analysis of the best thought on the subject together with a digest of the techniques in current use. Such an analysis can call attention to factors that may well be taken into account in the preparation of a law and to administrative procedures that have been found appropriate in putting laws into effect. It can likewise warn against what have been found to be constitutional pitfalls. It can provide suggestions for sections of a law which can then be fitted into the statutory provisions of a particular State; suggestions, for instance, as to good procedure for foreclosing a tax lien with adequate provisions for notice, hearings, and the like.

It is a commonplace that efforts to obtain the best land use in rural America face a vast complex of problems. Since the problems themselves are spread over a vast area, programs that seek to deal with them must be capable of flexible adjustment to local variations.

This is a big country: 48 States; 3,030 counties; 130,000,000 people. There are 1,900,000,000 acres of land in the United States. Of these 415,000,000 are arable acres. The potential resource of cultivable land, under the best soil-conserving practices, is close to 450,000,000 acres.

Our continental area is divided into 76 major

drainage areas. Superimposed on these drainages are 13 major type-of-farming regions. They are usually referred to as the mixed-farming regions, the fruit- and mixed-farming regions, range livestock, wheat and small grains, the Dairy Belt, the Corn Belt, the general-farming regions, the Cotton Belt, the self-sufficing areas, the special-crops regions, tobacco and general farming, truck regions, and the nonagricultural areas. Within these 13 major type-of-farming areas, more than 100 important subregions can be isolated.

The United States embraces within its continental borders areas of excessive humidity and areas that are arid. Much of our land requires drainage; much requires irrigation. We have vast treeless plains, and watersheds that are massively timbered.

Although problems of erosion, of floods, of submarginal lands, of isolated settlement, of low farm income, of resources inadequate to support the population dependent on them, are more or less common to the whole of our area, the combinations in which these problems occur vary from State to State, and locality to locality. The outstanding need of agricultural administration in the United States is, therefore, the close adjustment of National and State programs to the particular combination of problems found in a given county or subwatershed.

Within a single area a whole set of problems may coexist. Erosion, floods, duststorms, low farm income, submarginal lands, isolated settlement, distance from markets, poor roads, badly organized school districts, lack of information on the part of the farmers, inadequate hospitals, maldistribution of income, many farms too small for economic operation, some farms much larger than they need be for economic operation, pressure of population on resources greater than the resources can support, insecurity of occupancy with overmuch dependence upon sharecropping, exploited farm labor, overgrazing, clear-cut slashing of timber supply, inadequate use of fertilizer with resulting loss of soil fertility, one-crop farming—all of these may be found in the closest sort of interpenetration within single drainages or type-of-farming areas.

As a matter of fact, our names for these problems provide them with separate identities that are quite artificial. Simply because we have different names for them, it is not true that the problem of erosion is a thing separate and apart from the problem of floods. The physical, social, and economic events of our universe are too complex for the human mind to be able to deal with the whole at all times. We are compelled, therefore, to break up the whole into manageable parts. It is natural that when we have come to understand one of these manageable parts to some extent we regard it as a separate item that we can isolate from the rest. Indeed, for certain purposes we can isolate it. But having separated our single problems, we tend to formulate separate solutions for them and to prepare separate statutes dealing with them.

Legislatures usually insist upon preparation of separate statutes for separate items. In that way they get a grip on what has to be done. There is also a legal reason for handling problems like these as though they were separate items. The constitutions of nearly all the States provide that a legislative bill shall contain only a single subject. Legislatures and courts are accustomed to regard rural zoning, erosion control, flood control, tax delinquency, land settlement, health, etc., as separate subjects. A single legislative bill, therefore, cannot deal with a number of these in combination.

But despite the convenience of breaking down an unmanageable whole into manageable parts, if we want to be effective in solving our land use problems, we must never permit ourselves to lose sight of their interrelation. In actual fact, on any one farm or ranch or even within a watershed as a whole, the erosion problem does not concentrate in one corner while the flood control problem occupies another, the tenancy problem a third, the overgrazing problem a fourth. However convenient such a world might be for farmers, land use planners, and program administrators, that is not the nature of the world in which we live.

Legislation by the National Government alone cannot provide the institutional tools needed to help solve these problems. As will be discussed more fully below, our National Government is a

Government of limited delegated powers. Many of the things that need to be provided by legislation, if good land use is to be achieved, are outside the constitutional power of the Federal Government. If there is to be legislation on these subjects at all, therefore, it must be legislation by the several State governments.

It is too plain to need argument that Americans must look to their State and local governments for much of the legislation they need to implement them with tools for effective work in a land use program. The main burden of this book, therefore, is to discuss the most significant of the land use legislative programs to which States and localities have given their attention.

Significant State Achievements

In an address to the 48 State Governors, at a meeting of the Governors' Conference in Duluth, Minn., on June 5, 1940, Gov. M. Clifford Townsend of Indiana, speaking on The Place of the State in a Land Use Program, presented a summary of recent State achievements in land use legislation. The following is quoted from Governor Townsend's address:

> Now, the first thing I want to emphasize on this point is that during recent years the State legislatures have been very active in meeting their share of this responsibility. Let me select a few illustrations, more or less at random. California, for example, has contributed much to the development of the law of water rights, as well as to county planning and zoning. Wisconsin has pioneered with regard to rural zoning and the forest crop law. The ground water law of New Mexico is being urged upon other States as a model piece of legislation. Ohio has adopted a forest tax law and a recent statute authorizing the State to acquire chronically tax-delinquent lands for conservation purposes. The recent county consolidation legislation and several county zoning enabling acts show that Tennessee is active in this field.
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> A county zoning enabling act was recently introduced into the Kentucky legislature, and I am informed that the Governor of Kentucky has either recently appointed, or has announced the proposed appointment of a Governor's Committee to study farm tenancy. Pennsylvania has adopted a county planning and zoning law. North Dakota has adopted legislation concerning the reorganization of county government and a grazing association law. The legislature in Oklahoma has considered legislation dealing with landlord-tenant relationships on the farm. South Dakota has adopted a county land management act, and a grazing association law.
>
> Most of you, I am sure, are informed about the pioneer work done in New York on the administration of tax reverted lands in forest areas, and some of you may know about the recent law permitting counties to utilize a stream-lined procedure to foreclose liens for delinquent taxes. The Kansas legislative council is at work on legislation to encourage the retirement of submarginal crop lands to grass. Colorado has a planning and zoning act. Arkansas is making a study of landlord-tenant relationships. Missouri has established a Conservation Commission. Montana has adopted a grass conservation act as well as legislation making possible better administration of county lands. The forest tree exemption law of Connecticut is a significant milepost. Georgia has enabled several of its counties to adopt rural zoning. The Governor of Iowa has appointed a Farm Tenancy Commission. The legislature of Maine has provided for the economic organization and financing of government in the unorganized territory of the State. Michigan has been one of the pioneers in rural zoning and the administration of tax-delinquent lands. Minnesota, too, has a rural zoning law and has recently improved methods of acquiring State tax titles. North Carolina has recently revised its tax collection procedures. Oregon has a reforestation law and a recent statute facilitating school district reorganization.
>
> In my own State (Indiana) in 1935, we adopted a county planning and zoning act, and in 1939 a law authorizing the State Department of Conservation to acquire tax-delinquent lands that cannot be sold at tax sale, and to utilize these lands for conservation purposes.
>
> In addition to all this, 36 States have within the last 4 years adopted soil conservation district laws patterned, in most cases, after a Standard State Soil Conservation Districts Law which was cooperatively worked out by representatives of various State agencies and the United States Department of Agriculture. Under these laws more than 300 soil conservation districts have already been organized on the basis of petitions signed by farmers asking for their organization and after the holding of referenda in which farmers have indicated, in most cases by overwhelmingly large majority votes, that they welcome this opportunity to organize themselves for the administration of their own erosion control and soil conservation programs. One of the major agencies of the United States Department of Agriculture—the Soil Conservation Service—is devoting more and more of its personnel and funds to facilitating the operation of these districts.
>
> This long list, which I have deliberately extended in order to emphasize the significant accomplishments of the State legislatures in this field in recent years, is only a random selection among many more items that could be mentioned * * *

Governor Townsend followed his summary of recent achievements with a call for new action, saying,

> I am not specially concerned, however, to spend my

time today encouraging you to rest on your laurels. The clear fact remains that there is a great deal more of State legislation and State administration in the field of land use that we have not been doing, but that we ought to undertake and to administer.

State Legislation in Our Government Structure

Considering the place of State legislation in our government structure, it is important to give attention to the respective constitutional powers of the National Government and of the State governments under our Federal structure and to the relationships that exist between the various types of State land use legislative programs now being widely discussed.

CONSTITUTIONAL REQUIREMENTS

First, as to the distribution of governmental power within our government structure: The Federal Constitution establishes the United States as a government of limited, delegated powers. The United States may exercise only those governmental powers that are granted, expressly or by necessary implication, in the Federal Constitution. The several States, on the other hand, are governments of inherent general power. They may exercise any governmental power that is not forbidden them, either expressly or by necessary implication, in the Federal or the State Constitution. Thus a Federal statute must be demonstrated to be within governmental power by language conferring the power; a State statute, by contrast, must be deemed to be within governmental power in the absence of a definite prohibition of the exercise of such power.

Because of the general governmental powers inherent in the State governments, it is impossible to draw up a complete list of the governmental powers that the States may constitutionally exercise in the field of land use legislation. Since they may exercise any power not forbidden them, it is more to the point to attempt to draw up a list of the prohibitions that the Federal and State constitutions impose upon them. If a particular land use measure that a State legislature has under consideration does not fall within the terms of any of these constitutional prohibitions, its constitutional validity may be safely assumed.

The Federal Constitution [1] imposes three principal limitations upon State governmental action:

(1) No State may "deprive any person of * * * liberty, or property, without due process of law."

(2) The proceeds of taxation may not be expended upon other than a "public purpose." (This limitation has been derived by the courts, not from any express provision of the Federal Constitution, but as an implication of the provision that no State may deprive any person of property without due process. Many State constitutions, however, make this limitation explicit.)

(3) No State may "deny to any person within its jurisdiction the equal protection of the laws."

The State constitutions generally repeat these three limitations on the exercise of governmental power. Many of them impose additional limitations, of which the following four are the most general and the most important from the viewpoint of the particular types of legislation with which this book is concerned.

(1) All but a very few of the State constitutions, expressly or by judicially derived implication, prohibit delegation of power from one department of the Government to another, and invasion of the respective spheres.

(2) The constitutions of 10 States prohibit either the State or political subdivisions of the State, or both, from engaging in "works of internal improvement"; or impose limitations on such action.

(3) The constitutions of 45 States prohibit the "lending or donating" by the State or political subdivisions, or both, of credit, money, or property to or in aid of private persons.

(4) Nearly all the State constitutions require

[1] This discussion does not attempt to present an exhaustive list of the constitutional limitations. Only those that are specially relevant to the types of State land use legislation discussed in this report are referred to. For a fuller discussion see Philip M. Glick, The Soil and The Law, Journal of Farm Economics, pt. I, May 1938; pt. II, August 1938. For a general discussion see W. W. Willoughby, The Constitution of the United States, second edition.

that acts of the State legislature shall be limited to a single subject, and that the subject shall be adequately expressed in the title of the act.

It may be said, in general, that when a State legislature wishes to adopt land use legislation it must be sure that the bill under consideration is reasonably clear and complete; covers a single subject and expresses that subject adequately in the title; does not delegate "legislative power" to administrative officers or to the courts; does not deprive any person of liberty, or property without "due process of law"; does not deny to any person "the equal protection of the laws"; does not involve the expenditure of public funds for purely private purposes.

State land use legislation may provide for at least three types of governmental activity by the State and local governments:

(1) Direct administration of lands by a government agency. Instances—State or community forests and parks.

(2) Public regulation of private land use. Instances—rural-zoning ordinances; conservation ordinances adopted by soil conservation districts; statutory requirements applicable to farm leases.

(3) Payment of subsidies by a governmental agency on the condition that particular land use adjustments are made. A familiar instance is the assistance given by a soil conservation district to a farmer who has agreed to follow a 5-year conservation program on his farm.

Police Power and Due Process

It is therefore pertinent to examine the content of some of the constitutional provisions just summarized in terms of these types of activity. Just what is meant by the "police power" and by the phrase "due process of law"? The requirement of due process protects the individual from unreasonable and improper interference by the State with his freedom to carry on operations upon the land he owns. That the guaranteed freedom is not absolute is clear from the use of the adjectives "unreasonable and improper." The State may regulate private land use, or other private conduct, where necessary to protect and promote the public health, safety, morals, or welfare. This protective power is traditionally called the "police power."

On March 5, 1934, in its decision in the Nebbia case sustaining the New York statute regulating milk prices, the Supreme Court of the United States stated the relationship between due process and the police power:

> Under our form of government (said the Court), the use of property and the making of contracts are normally matters of private and not of public concern. The general rule is that both shall be free of governmental interference. But neither property rights nor contract rights are absolute; for government cannot exist if the citizen may at will use his property to the detriment of his fellows, or exercise his freedom of contract to work them harm. Equally fundamental with the private right is that of the public to regulate it in the common interest.

The Court then defined "due process," saying, "And the guaranty of due process, as has often been held, demands only that the law shall not be unreasonable, arbitrary or capricious, and that the means selected shall have a real and substantial relation to the object sought to be attained."

In the past the courts have sustained various types of regulation of private land use as a proper exercise of the police power. They have held valid statutes designed to conserve natural resources (including the soil, fish and wildlife, gas and crude oil), to conserve the food supply, to prevent the spread of cattle and sheep diseases, to develop, reclaim, drain, and irrigate lands, and to protect the public water supply—on the ground that each, in its own way, would promote the general welfare. Among the regulations held valid for these reasons have been: Prohibitions of the waste of gas and crude oil; a requirement that owners of forest land remove brush and debris likely to cause fires; the required destruction of trees to prevent spread of cedar rust, San Jose scale, the "yellows," citrus diseases, and apple scab; the required destruction of wheat crops because of the presence of corn borers on cornstalks in wheat fields; the required dipping of slaughtered or diseased sheep and cattle; and regulation of livestock grazing within 300 feet of streams feeding a municipal water supply.

Other attempted regulations of private land

use have, however, been held invalid as involving a deprivation of property or liberty without due process. One State court thus held invalid certain limitations on the diversion of surface waters, and another court held invalid certain State limitations on cotton production designed to maintain cotton prices.

Uses of Public Funds

The constitutional provision that expenditures of public funds must be for public rather than private purposes, means what it says. It is true, of course, that wherever particular work has to be done by a Government agency upon privately owned land, as in the case of work done in an erosion control, flood control, or forest maintenance program, some individual landowners may receive private benefit from the work. The rule that the courts have developed to meet this difficulty says merely that where the benefit to the individual is incidental to the object of achieving a benefit to the general public, the expenditure will be held to be for a public purpose.

Delegation of Power

The general rule against delegation of legislative power is simple; but its application to the concrete instance is frequently difficult. The courts say that the legislature may not delegate to others the power to legislate. But inasmuch as it is manifestly impossible for the legislature to anticipate every conceivable situation that will confront the administrative officers, and to define the rule to be applied to each situation, the general rule has come to be qualified as follows: The authority to prescribe administrative regulations to control application of the statute to particular instances, as well as the authority to determine their applicability in particular cases, may be delegated by the legislature to administrative officers; but the statute must contain specific "standards" to guide the administrative officers in formulating the regulations and determining their applicability.

Equal Protection of the Laws

Federal and State constitutions declare that no State may deny to any person "the equal protection of the laws." This is the principle of uniformity in legislation. By established rule, the required uniformity is substantial rather than formal. All persons similarly situated—that is, of the same relevant class or circumstances—must be treated alike. Classification, with differential treatment by classes, is not prohibited; it must, however, have a substantial relation to the end being sought. For tax purposes, the courts have adopted a more liberal rule of permissible classification than for regulatory purposes, but even for regulatory purposes the legislative judgment as to what classification is necessary is usually respected by the courts.

Statutes Limited to One Subject

Although the State constitutions require that a statute shall be limited to a single subject, it is pretty well settled that the requirement is not violated when the statute deals with one central subject matter, and every provision of the act is pertinent to that subject matter. The courts have held, for example, that a statute which authorized the creation of new reclamation districts may also validate the bonds of existing districts, and that a statute creating the commission form of government for cities may contain provisions on all matters usually connected with a comprehensive plan of city government, and may confer various types of powers upon the cities.

To the drafter of a statute these constitutional guarantees at times appear as mere obstacles to his work. Fundamentally, however, these guarantees are part of the ramparts of democracy. With care, and with legal assistance in bill-drafting, none of these guarantees need stand in the way of effective formulation and administration of State land use programs. They will serve, rather, to support and fortify governmental action in a democracy.

EIGHT MAJOR TYPES OF STATE LAND USE LEGISLATION

The thinking and discussion of the last few years have served to throw into prominent relief eight major items of State land use legislation.[2] This book will devote a chapter to each of the eight items, indicating what land use maladjustments require correction, what physical, social, and economic facts relate to the maladjusments, what measures are in force or being considered in the various States in respect to the situation, and what administrative, policy, and legal considerations affect the formulation and administration of the statute, or statutes, required.

It is probable that every State will have special land use legislative proposals on its agenda for its own special problems, but eight major measures that are probably of interest to nearly all the States are:

(1) A State rural-zoning enabling act that authorizes counties and other appropriate local units of government to adopt rural-zoning ordinances.

(2) A group of statutes to improve the workings of the water laws, particularly in the Western States, to promote efficient and conservational use of water, probably including new legislation dealing with the conservation of ground-water supplies.

(3) Legislation along the lines of the soil conservation district laws now in effect in 38 States.

(4) Revision or amplification of farm-tenancy law.

(5) A statute or statutes offering a procedure for revising the structure of rural local units of government.

(6) Legislation to simplify existing procedures for the collection of delinquent taxes and the acquisition of a reasonably sound State or county title to chronically tax-delinquent lands.

(7) Provision for State purchase of lands in the interest of land use adjustment.

(8) Authorization of an appropriate State agency to examine and classify lands that come into public ownership through tax delinquency or other involuntary routes; to make again available for private use lands found to be appropriate for that use; and to administer the remainder in accordance with their best use.

INTERLOCKING PROBLEMS—INTERLOCKING SOLUTIONS

The need for common planning and cooperative administration is particularly clear in the case of the eight measures here discussed. Is soil erosion, for example, a serious problem in a particular area? If it is, the obvious attack upon it would be to encourage changes in method of land use, and to create the appropriate administrative institutions that will facilitate the adoption of the changed techniques. But frequently the methods of land use are products of the forms of land tenure. A tenant who is not sure from year to year how long he will remain on the farm cannot plan and carry into effect a system of farming calling for any substantial postponement in securing returns from his farming operations. Without active participation by his landlord in his management of the farm, he may be under great pressure to exploit the land for cash crops, regardless of how much erosion his type of farming may produce.

Similarly, the victim of heavy investment in a high-priced farm with high fixed financing charges, or high levels of taxation, may feel himself forced to follow a system of farming that will give him as much current income from the farm as possible—again, regardless of how much erosion his type of farming may produce.

Clearly, then, to solve the erosion problem adequately, to make possible a direct attack upon that problem, modifications in tenure systems, or in taxation policies, or in rural credit systems, or in all of these, may be required.

This interlocking of problems is particularly clear when considered in respect to specific areas. In parts of the Great Plains, the land use problem results in large part from attempts by farmers and ranchers to operate units too small for ade-

[2] A ninth major item of State land use legislation is to provide for conservation and proper utilization of privately owned forest lands. That subject is not discussed in this report because a Joint Committee of the United States Congress is engaged in making a comprehensive investigation of this field. It has held hearings in various parts of the United States, and its report has not yet been submitted.

quate economic return. A wave of settlement rolled westward from the Missouri River under a national policy, expressed in the Homestead Act, assuming that 160, and later 320, acres were adequate for a farm unit. Both the Government and the new settlers ignored the fact that in an area of limited average rainfall and low humidity, and of widely fluctuating moisture conditions, it was imperative to success that a system of farming be followed that would take those natural limitations into account. Instead, the new area was opened up under a system of farming that had developed in the more humid, forested regions of the East. Local governmental institutions then were formed, again patterned on eastern farming, to fit the 160- or 320-acre ideal. The road network, the school system, the pattern of county government, the distribution of towns, cities, and businesses, the level of capitalization, all were worked out with the needs and possibilities of the humid sections in mind—but they were located in the arid and semiarid portions of the Great Plains.

This laid the groundwork for the land use problem of 1940 in this area. Today the need for enlarged operating units, and extensive rather than intensive operations, is generally agreed upon. The problem, however, is to work out the necessary adjustments in ownership units, and in the structure of local government that depends largely on the proceeds of property taxes to supply public services.

The low and hazardous farm income of the area results from reliance on cash-crop farming. Livestock farming requires larger units, but larger units are difficult of attainment because owners are widely scattered; because land values are predicated on a cash-grain system of farming adapted only to more humid areas; and because the level of real estate taxation is based upon a pattern of local government and public services beyond the power of a small number of larger operating units to support. Many people in the area, whose holdings are too small to support them, cannot relocate on better lands without assistance. Many ownership units are falling into the hands of financial institutions whose urge is to liquidate at as high a price as possible in order to minimize losses; when units come into public ownership through tax delinquency, the public agency likewise feels the urge to liquidate as soon as possible, to restore the lands to the tax rolls.

This group of problems involves nonresident ownership, public and private indebtedness incurred on the basis of more intense use than the land will permit, the pattern and the financing of local units of government, ownership by financial institutions of government, policies, management and disposition of corporate and publicly held lands, inability of many resident owners to cut loose and find opportunity elsewhere. It obviously cannot be adequately dealt with solely through a rural-zoning ordinance, through adjustments in procedures for acquiring tax-delinquent lands, through changing the water laws, nor through improving the tenure system. All these instruments must supplement and support each other, with each used to the proper extent.

Or take a land use problem typical of forest cut-over areas. It may involve low incomes, high costs of public services per family, and hazards from flood and erosion. Among the factors in the low farm incomes will probably be farms located on soils ill adapted to farming; investments in raw land beyond the ability of the land to carry even when subjugated; the difficulty and high cost of land clearance, with the tendency to cultivate units too small to support a family. Among the factors in high cost of public services will usually be scattered settlement with attendant expense for schools and roads; heavy relief loads; inadequate tax base to support services rendered, which is due in turn to low farm productivity and depletion of timber resources; heavy burdens of public indebtedness assumed during the period of prosperity when nature's gift of trees was being converted into cash; and heavy tax delinquency on lands stripped of their trees. Flood, erosion, and siltation damages resulting from such an area may be found far removed from their source, even in towns and cities.

Resultant land use problems include: Poor farms too small to support families; land overburdened with credit or taxation charges; unem-

ployment in timber and lumber industries; distressed units of local government; poor schools and roads, or schools and roads that cost more than the area can support; depletion, or even destruction, of valuable recreational possibilities and attendant businesses; increased hazards from flood, run-off, sedimentation, and siltation.

If adequately administered, a program of rural zoning can prevent new settlement in areas in which further settlement would intensify existing problems, but it cannot remove settlers already in place, nor can it increase forest growth, bring about sustained-yield management of timber resources, lower the burden of public and private credit costs, decrease the tax level, reduce flood hazards, raise incomes, nor create recreational assets. Similarly, a land-purchase and resettlement program can assist some of the surplus population to relocate in areas of greater promise, but it cannot prevent new settlement in the very area in which purchase is being undertaken, unless all the land is purchased (usually an impossibility), or unless a rural-zoning ordinance supplements the purchase program.

The truth is plain and clear for all who ponder facts like those here summarized: The eight land use measures here analyzed, and other land use measures that are being more or less widely discussed, must be regarded as the units of an army, or as single tools in a kit, or as the separate chapters of a book. If we are to bring about wise land use over the vast continental area of the United States, no one, or two, or three of those by themselves can serve as sufficient instruments. They must be used in appropriate combination; and the effectiveness of each of them is largely dependent upon the concurrent successful operation of the others. The separate legislative items cannot be regarded as isolated independent statutes that can be used entirely by themselves as though they were specifics for particular diseases.

As a matter of fact, land use programs do not always complement one another as neatly as the foregoing discussion might indicate. For example, local units of government, by developing schools and roads in unsettled areas not appropriate for settlement may cut across another program designed to prevent settlement in the area and create a forest resource on those same lands. Where programs are not carefully interrelated, they may work at cross-purposes. Following upon the chapters discussing the eight land use proposals, therefore, a chapter is devoted to discussing how these eight instruments may be used together.

Rural Zoning

URBAN ZONING has been a familiar American practice from the time when Boston colonists regulated the location of slaughterhouses and trustees of Virginia towns passed ordinances concerning the alignment of dwellings, the structure of chimneys, and the keeping of pigs. The limitations of building heights, requirements for set-back lines, restrictions on yard areas which characterize the city zoning of more recent years have been only developments of these early practices. So also has been the extension of regulation to suburban areas—as commuters have superimposed city patterns on nearby agricultural counties, these fringes have been zoned as part of the metropolitan areas to which they essentially belong.

Zoning by and for rural people, by contrast, is hardly more than 10 years old. It began in 1929 with an amendment of the county zoning law of the State of Wisconsin. This law previously limited county regulations to the urban type. The amendment authorized regulation of the use of land for agriculture, forestry, and recreation.

THE OBJECTIVES OF RURAL ZONING

The general objective of rural zoning is to encourage the best use of agricultural, forest, and recreational resources. Specific zoning ordinances may approach this goal from a number of different angles. One angle is to preserve or improve the land itself. Another angle is to provide public services, such as schools and roads, as economically as possible. A third is to discourage attempts to farm land which cannot yield adequate income from agriculture and to encourage the development of new uses of land, particularly recreational uses, whose net return may prove considerably greater than the return available from present uses.

Legally, zoning is one application of the inherent "police power" of the States to restrict harmful actions of individuals in order to protect the interests of all. The power is applied through ordinances adopted by local units of government in a manner prescribed by the State legislature in an enabling act specifying the particular governmental unit that can zone, the regulations it can adopt, and the procedure governing the adoption and enforcement of regulations. (This grant of power is a permissive one—it need be used only when local people desire it.)

Zoning ordinances adopted by local governmental units describe the districts zoned, the regulations applied in each, and the means for enforcing them. A map showing the location of each zoned district is usually made a part of the ordinance. Uses which are forbidden by the ordinance but which are already there, called "nonconforming" uses, are usually allowed to continue without restriction, even though the land is later sold or leased. Under most zoning

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laws the privilege is lost, however, if the nonconforming use is discontinued for a specified period, and the ordinance may state that future use must be in harmony with the regulations. Amendments to an ordinance may be made at any time, to adjust regulations and district boundaries to changing conditions. Agricultural development, for example, may be forbidden in isolated areas of good soil until equally good unused land within existing communities comes into production, but when a demand for further expansion arises, the more isolated areas can be gradually opened.

State Enabling Acts Now in Force

Since the passage by Wisconsin of the original enabling act, several other States have granted permission to local units of government to zone land for strictly rural purposes. California, Colorado, Georgia, Michigan, Minnesota, Missouri, Pennsylvania, Tennessee, Virginia, and Washington now have county-zoning enabling acts, although the power is not granted to all the counties in each State—in Minnesota, for example, zoning is limited to counties where there are State or Federal forests, or State conservation areas. Indiana and Illinois also have enabling acts, but exceptions or qualifications make uncertain the scope of the zoning powers. In Idaho, even though the legislature has not passed an enabling act, the constitution probably authorizes county zoning.

In New England, State-wide enabling acts giving zoning powers to the towns have been adopted by all the States. Although these laws were designed primarily to meet urban and suburban problems, it is believed that rural zoning to control the settlement pattern may be possible under their provisions.

Since a single enabling act can authorize counties to use all types of zoning, the application of urban types of zoning regulations to rural areas will probably become of increasing importance; a comprehensive county plan for land utilization would normally include consideration of the utility of zoning in its several forms and would not be limited to its strictly rural aspects. It might include regulations of the urban type around the fringes of cities and their extensions along the highways. Billboards located on curves and other obstructions to clear vision, filling stations, hot-dog stands, and other small wayside merchandising establishments that draw traffic from the highways and feed it back into the stream create traffic hazards that might be prevented or ameliorated by zoning. They also destroy the beauty of the countryside. California ordinances have grouped places of business and have required them to observe set-back lines and provide parking spaces for patrons. State zoning of strips adjoining the highways, and the taxation of billboards, have been used as alternative approaches to the problem.

Current Rural Uses of Enabling Acts

The actual use of the various enabling acts for rural purposes, as distinguished from suburban purposes, has been confined chiefly to four States—Michigan, Minnesota, Wisconsin, and Washington—although ordinances for suburban areas have been adopted in other States, including California, Georgia, Illinois, Maryland, and Virginia.

In Wisconsin, rural-zoning ordinances have been adopted in 26 northern and central cutover counties and in 3 southern agricultural counties. Rural zoning in the northern part of the State, as in the cutover area of the other Lake States, resulted from the demands of residents for some means of meeting the land problems characteristic of the region. Agricultural development did not replace forest industry at the rate anticipated. Settlement in some areas developed rapidly, crops grew well and farmers prospered, but in other areas the efforts of settlers resulted only in poverty for themselves, and relief burdens for the public. As the rate of settlement tapered off, after 1920, the isolated locations of certain families raised school and road costs disproportionately. The tax base shrank as tax delinquency followed the removal of timber; and falling tax revenues emphasized the high public costs of isolated settlement. Then as migration from the cities to the land increased, after 1929, it became obvious that settlers needed to be guided to the better land in or near existing communities if the problems of

isolated settlement were not to be aggravated. Communities turned to rural zoning for help in guiding their agricultural development and population distribution.

Other important incentives to zoning were the difficulty of supplying public-health facilities to isolated families; the need for forest rehabilitation on nonagricultural lands, hindered by fire hazards from scattered clearing operations; and the interference of agriculture with the development of recreational uses. In line with these objectives, zoning ordinances in Wisconsin were designed to affect the distribution of population by restricting the use of land through the prohibition of both year-round residence and farming in districts set aside as "forestry" zones, and the prohibition of farming in "recreational" zones.

Delta and Marquette Counties in the northern peninsula of Michigan, and King County in Washington, have adopted ordinances establishing similar regulations in rural areas; and three Minnesota counties, Carlton, Koochiching, and Lake of The Woods, have more recently enacted rural-zoning ordinances. In Minnesota, however, farming is not prohibited in forestry zones.

The ordinances of the three southern Wisconsin counties combine features of the urban and rural types of zoning. Jefferson County established three zones: "forestry," "conservancy," and "agricultural."

In the forestry zone, which includes only a small part of the county, 10 uses of land and buildings are permitted, including single-family residences, forestry, and public parks, but commercial agriculture is not included.

The conservancy zone borders on rivers and lakes and is designed to protect recreational values. Agriculture is permitted in the zone, but such uses as multiple-family dwellings, billboards, and junk yards are prohibited.

In the agricultural zone farming is permitted of course, but six uses are prohibited, including junk yards and taverns, unless the taverns are located at least 1,000 feet away from any home, school, or church.

Several regulations of the ordinance apply to all zones. For example, no building can be erected or structurally altered near lakes or rivers unless the basement floor is above the high-water mark. Regulations are also included within each zone for assuring minimum-lot areas for residential purposes, for restricting the height of residences, and for establishing setback lines to prevent the crowding of buildings too close to highways. Somewhat similar provisions of the urban type are also found in the ordinance of King County in Washington.

Zoning as Part of a County Plan

The purpose of all of these zoning acts is to provide a framework for land management, both public and private. The close relation of zoning to other public programs makes its consideration along with these programs a matter of primary importance. Only as the citizens of the area to be zoned, through the exercise of the planning process, work out a coherent idea of the best use to which they can put their resources will the objectives of zoning be achieved. The counties in which zoning ordinances operate best are counties in which well-considered plans are prepared before the enactment of the zoning ordinances. These plans provide coordinated means of approaching the various problems of the area, reducing relief costs, adapting different types of land to their most productive uses, laying out a road and school system which will yield the best results, adjusting tax policies, and managing public lands. Regulations for the areas to be zoned, prepared on the basis of such county plans, can serve as a guide both to individual farmers and to government agencies connected with agricultural programs.

By indicating the nature of the future development of a county, zoning also assists State and Federal agencies to direct their programs more specifically toward adjustments which citizens of the area believe important in correcting local problems. This applies to the agencies working with farmers on privately owned lands such as the Farm Credit Administration, the Farm Security Administration, the Agricultural Adjustment Administration, and other agencies. It applies to agencies operating under State land-management programs for game preserves,

forests, parks, and other recreational areas; and it applies to agencies administering Federal lands, such as the Forest Service, the Grazing Service, and the Soil Conservation Service.

Since practically all ordinances permit nonconforming uses to be continued, zoning alone, in the short run, is likely to be ineffectual in bringing about major changes in rural economy. Of much greater importance is the part it can play in strengthening such good land use programs as public-land acquisition or exchange, forest development, or the stabilization of the western range. The effect of a zoning ordinance is to prevent adverse changes in the present pattern of land utilization until desirable adjustments can take place naturally, or until other programs can directly affect existing maladjustments. Prohibiting year-round residence in a sparsely settled district, for example, serves to prevent an aggravation of the existing problem of public service costs for isolated settlers, since by this action no additional families will increase the burden on local government. Families living in these sparsely settled areas can then be aided to find homes near communities, either by land exchange or public purchase. Zoning also opens the way to adaptation of local government to areas where there is little year-round residence, by provisions such as those now in force in the unorganized territory of the State of Maine. The relationship between zoning and settler relocation has been expressed: "Relocation without rural zoning is a job never done. Rural zoning without relocation is a job half done. Rural zoning followed by relocation will make both a success."

Under the protection of zoning, large blocks of intermingled publicly and privately owned land may be set aside for forestry, grazing, or other uses not requiring year-round residence. The application of zoning to public lands is limited in the case of Federal lands by the fact that zoning regulations cannot restrict use or occupancy in a manner inconsistent with Federal laws or policies. In northern Minnesota, for example, Federal laws leave certain public lands open to homesteading, even though they have been found worthless for farming purposes. The adoption of a county-zoning ordinance prohibiting year-round residence on these lands could thus not prevent them from being homesteaded. But this Federal land should be included within zoning districts, for if a squatter moves in without complying with the homestead laws, and in violation of a zoning ordinance prohibiting year-round residence, the county authorities can take action against him for violating the ordinance regardless of the fact that the land is Federally owned. If the enabling act expressly says whether lands owned by the State, county, or other local governmental units are to be subject to a zoning ordinance, legal problems are likely to be avoided that might arise in the absence of an express statutory provision.

The preparation of a comprehensive plan prior to the adoption of a zoning ordinance has much to be said for it from the standpoint of crystallizing community recognition of existing problems and providing for the coordination of programs designed to help in the solution of those problems. There is also much to be said for it from the legal standpoint, as a means of avoiding conflicts with constitutional requirements. Experience in city zoning has indicated that an ordinance is likely to be better received by the courts if it can be shown that the measure is a means for carrying out a comprehensive plan of future development; and some courts have even gone so far as to doubt whether urban zoning regulations would be constitutional if not part of a comprehensive plan. The favor with which such planning is viewed is further indicated by the zoning enabling acts of California, Colorado, Indiana, Virginia, and Washington, all of which require a master plan to be prepared before a zoning ordinance is adopted; and courts have held that if an enabling act requires an ordinance to be prepared in accordance with a comprehensive plan, failure to do so will invalidate the ordinance. The desirability of planning to strengthen the ordinance is thus apparent.

A basis for planning of this type for rural areas now exists in practically every State under the County Land Use Planning Program jointly developed by the various Land Grant Colleges and the United States Department of Agriculture. Much of the work of this program

should form the ground work for satisfactory rural zoning ordinances that will meet constitutional tests and be of maximum usefulness.

The Constitutional Basis of Rural Zoning

During the first quarter of this century, the increasing use of the device of urban zoning was paralleled by a struggle in the courts to establish the constitutionality of such ordinances. In 1926 this goal was achieved when the United States Supreme Court upheld comprehensive urban zoning in the decision of *Euclid Village* v. *Ambler Realty Co.* (272 U. S. 365).

As yet, no rural zoning ordinance has been before any Supreme Court, so it is impossible to refer to court decisions that expressly consider rural-zoning problems. But a mass of decisions dealing with urban-zoning enabling acts and ordinances, and concerning situations analogous to those found in rural zoning, permit a discussion of underlying principles.

Rural zoning is an exercise of the State police power, and it is nonetheless a State power because it is the subordinate units of government, such as counties or townships, that customarily prepare and adopt zoning ordinances. The objectives of zoning and the regulations of zoning ordinances cannot exceed the limits of the police power as fixed by the constitutional requirements of "due process." [3] "Due process" cannot be defined with absolute precision, but it includes three general requirements, to which each zoning regulation must conform if it is to be valid:

(1) The objectives of the regulation must promote the general welfare,

(2) The means used must have a substantial relation to the ends or objectives sought, and

(3) The regulation must not be arbitrary, unreasonable, nor oppressive.

The promotion of the general welfare is a vitally important criterion of rural zoning since most of the effects sought by a zoning ordinance will be weighed by the courts to determine if they fall within the concept of the general welfare. What is or is not within the general welfare cannot be defined except in a very general way, since the concept is not static but changes with the growth of public needs. It depends directly upon certain premises or assumptions of social values. In other words, certain actions of individuals are held injurious to the group, or to the general welfare, only because certain standards have been widely accepted, such as those concerning education, highways, working conditions, and more recently, levels of material living.

When individual actions tend to hinder the group from maintaining or reaching these standards, the police power may be called upon to restrain them. For example, the concept of general welfare in the field of zoning was once closely connected with the law of nuisances; that is, unless the action of an individual was in the nature of a nuisance, it was felt that it could not be restricted under the police power. This is illustrated by a 1916 decision of the Minnesota Supreme Court, which held that zoning could not be used to prohibit stores in residential areas of cities because stores were lawful business and were not obnoxious. By 1925, however, the same court had changed its views in accordance with changing public standards, and the 1916 decision was overruled. Modern decisions emphasize that zoning is not restricted to a suppression of nuisances.

A primary objective of rural zoning has been the promotion of local governmental efficiency, the provision of necessary public services at a minimum cost per family. Although this has not been considered by the courts except along with other objectives, there would seem to be no question that it is in the interest of the general welfare. In urban zoning, the segregation of factories and other commercial enterprises from residential areas in order, among other things, to reduce the costs of police and fire protection, and to permit the use of less expensive street pavement for the lighter residential traffic, has received judicial approval. It is reasonable to suppose that rural-zoning ordinances designed to effect economies of government in rural areas also fall within the scope of the general welfare.

But even though the objectives of a zoning regulation promote the general welfare, the regulation may still fall short of due-process requirements unless its operation has a sub-

[3] See Introduction, pp. xi to xix, inclusive.

stantial relation to the end sought. Judicial interpretation of this requirement has not been consistent, but it indicates that an ordinance containing regulations more stringent than necessary to accomplish its objective may be subject to question on constitutional grounds.

In the case of rural zoning, this problem might arise in the control of erosion by regulations prohibiting cultivation. If the objective could be attained by less drastic means, by prescribing strip cropping or certain tillage practices, the courts might not sanction the outright prohibition of cultivation. (The problem of constitutionality aside, sound policy-making would consider less drastic means for solving the problem before recommending zoning. Regulations on private property should be limited to the minimum requisite for accomplishing the end sought. Not only is the imposition of unnecessary hardships on landowners thus avoided, but the ordinances which are passed are much more likely to be accepted and enforced.)

The third requirement of due process, that the zoning regulation must not be arbitrary, unreasonable, or oppressive, is similar to that just discussed, and courts frequently do not distinguish between them. A zoning regulation is usually considered to be unreasonable and oppressive when it permanently decreases the value of property to the extent that the property is worthless for any permitted use. A decrease of value is in itself not sufficient to invalidate a regulation, nor is a regulation void because it acts incidentally to prohibit noninjurious uses, although these results, as well as a decrease of value, may be considered in determining whether the regulation meets the due-process requirement. Rural ordinances might be affected by this rule if the prohibition of a given agricultural use would eliminate all possible economic uses. If no reasonable alternative use of the property existed, courts might question the reasonableness of the ordinance since it would have the effect of confiscating the property.

This requirement also demands that an ordinance accord the same treatment to the same conditions wherever they occur. If an ordinance is to avoid the charge of arbitrariness, it should impose the same regulations and conditions on all lands of the same character.

When the requirements of due process applicable to zoning are viewed as a whole, they form a set of rules by which private interests are weighed against public to determine whether a zoning regulation promotes the general welfare sufficiently to allow its invasion of private property rights, and to what extent an invasion is permissible. The rules are not technical nor rigid, but are merely guides to the exercise of sound public policy. Whether a particular zoning ordinance is constitutional thus primarily depends on whether social benefits are regarded as outweighing private hardships to the extent that the restriction of property rights is justified. Adequate planning before the adoption of an ordinance is the best assurance that constitutional requirements will be observed.

Types of Zoning Regulations

Zoning regulations are the heart of an ordinance, for they describe the limitations imposed on the use or occupancy of land. It is thus important to prepare them with care so that they will go to the roots of the problem, will not unnecessarily restrict noninjurious uses, will be reasonable, and will be administratively practicable.

As previously indicated, there are two main types of county zoning, urban and rural. Space limitations prevent a discussion of the application of the urban type to rural or suburban areas. Rural regulations now in effect consist for the most part of: (1) Prohibition of year-round residence, and (2) regulation or prohibition of one or more agricultural uses. The following discussion is limited to enacted regulations prohibiting year-round residence and farming, and to a suggested regulation for use in parts of the northern Great Plains requiring operating units to maintain less than a certain ratio of cultivated to range lands. This does not mean, of course, that no other zoning regulations may be devised. It has been suggested, for example, that zoning might be used to accomplish some of the purposes within the authority of conservation ordinances passed by soil conservation districts. Suitable legislati

could be drafted to accomplish this, as is pointed out below in the discussion of the zoning unit of government, but since the problems of this type of zoning are essentially the same as those raised by the use of conservation ordinances considered in chapter 3, the question is not examined here.

PROHIBITION OF YEAR-ROUND RESIDENCE

Regulation or direction of the settlement pattern by prohibiting year-round residence in certain areas has been the main purpose of most rural-zoning ordinances now in effect. This type of control was undertaken chiefly to prevent excessive local governmental expenditures for schools, roads, health, and other public services, the costs of which depend largely upon the distribution of population, although other motives were present, including the general improvement of social conditions associated with sound community development. Prohibition of year-round residence has also been suggested as a phase of flood protection.

Schools and Roads

Roads and schools were constructed in the early years of the development of the Lake States cut-over region on the basis of anticipated increases in population and in taxable values. The residents and officials responsible for planning the highway and education systems of the Lake States expected the plow of the farmer to follow the axe of the lumberman, but these anticipations have not everywhere been fulfilled. Since about 1925 it has become increasingly evident that the earlier planning of public services was overly optimistic. Decline rather than expansion of taxable wealth and population followed the lumbering period in many areas, and indebtedness that was incurred to build schoolhouses, roads, and bridges did not decrease correspondingly. The resulting financial problems of the counties focussed interest on the efficiency of public expenditures.

Directly related to the problem of paying off old debts are the annual costs for education and other public services in sparsely settled areas, which are high per capita even though the quality of the services is frequently inferior to that of more populous areas. The costs for many of these services are more often inversely than directly proportional to the number of people served. For example, school costs in Pine County in Minnesota, in 1935–36, ranged from $125 per pupil for schools of 5 or fewer to $33 in schools of 25 to 30. The costs of maintaining a road—surfacing, grading, and removing the snow in northern areas—are much the same whether the road serves 1 family or 10.

The obvious disparity between the costs of providing services and the possible tax revenues from these scattered-settlement areas has made it necessary to establish State aid for roads and schools; but in some instances this has encouraged new isolated settlement by placing a premium on isolation. Many States distribute an educational fund to transport pupils who live more than a specified distance—say 2 miles—from a school. If a man may be hired to transport his own children, he has a chance to get a sizable supplementary income by locating a long way from a school; in a Minnesota county, a prospective landowner inquired of local officials how far he must live from a schoolhouse to secure this part-time income; armed with the information, he bought a tract that would qualify him for the job. Where settlement has already taken place, as in these cut-over regions, zoning can direct future settlement into existing communities where there are suitable resources, and can gradually develop adjoining areas by amendments to the ordinance as settlement expands. Excessive construction of schools and roads in advance of a stable population that can pay for them and use them efficiently is thereby prevented.

Likewise, an ordinance adopted in areas where new scattered settlement is occurring or likely to occur, may prevent high costs in the future. The control of settlement in unoccupied areas made available for agriculture by flood-control programs, as in the alluvial valley of the lower Mississippi, or by improved means of land clearing, would forestall many of the problems of location that plagued older areas of settlement. By consciously directing new settlement to productive soils and desirable community patterns, a stable agricultural development can be fos-

tered and economy of governmental institutions promoted.

As an alternative to zoning in thinly settled districts, public action might be taken to encourage immigration and expand agricultural development so that the disparity between tax revenue and public-service costs would be reduced. For the most part, however, these sparsely settled areas are marginal fringes between major land uses such as agriculture and forestry, or farming and range livestock production. Most of them contain some districts that for one reason or another should not be settled at all. Because of physical and economic conditions, such as fluctuating rainfall, doubtful soil productivity, and distance to markets, there is usually only a limited opportunity to solve the isolated settlement problem by more intensive development.

As another alternative to rural zoning it has been suggested that the problem of wasteful public expenditures be approached by curtailing or denying services such as roads and schools to families who move into sparsely settled areas. But a feeling that it is the obligation of the State to supply school and road facilities to all is so deeply imbedded in our way of life that it is doubtful whether the curtailment of services will ever be accepted. Constitutional and statutory provisions have been adopted by a majority of the States tending to insure that no child will be deprived of schooling because his parents live in an isolated locality or because they do not pay taxes commensurate with school costs. School officials are under a duty to provide necessary schooling, although in some States the obligation may be met by furnishing transportation or board and room instead of maintaining schools in sparsely settled areas. In addition, parents are charged with the responsibility of keeping their children in school during the years required for a grade-school education.

Roads are in a somewhat different category from schools as a public service since their construction for isolated families is usually within the discretion of road officials and is often not mandatory. But in the more sparsely settled areas, educational facilities can often be provided most economically by bus transportation of the children; consequently, roads must be maintained and kept clear of snow. Some of the northern States, Minnesota, for example, impose a duty by law upon county and township boards to keep roads free from snow, one of the most costly items in road maintenance. A similar duty to maintain bridges is common, and damages may be recovered from a township or county for injuries caused by failure of officials to maintain roads and bridges in proper repair. These considerations indicate a general feeling that people are entitled to roads as well as to schools.

Public Health

The expense of providing public health facilities was among the points considered when the Michigan, Wisconsin, and Minnesota zoning ordinances were adopted. Money spent for medical services for remote families frequently pays for more travel than service. Since medical items bulk large in relief budgets, the costs of travel are a considerable drain on the public treasury.

Flood Hazard

Regulation of settlement in flood-hazard areas has frequently been proposed in recent years, though progress to date has been slow. The provision in the ordinance of Jefferson County, Wis., prohibiting future construction of buildings with basement floors below the high-water mark, is a mild regulation of this type; the Los Angeles County ordinance was recently amended to forbid the construction of buildings for family-living purposes or for public assembly in certain flood-hazard areas. Three reasons for this use of zoning are apparent: Protection of public health, protection of life, and prevention of public-relief costs that inevitably follow floods. Under such regulation, lands subject to periodic floods can be used for forestry, recreation, grazing, or cultivation by families living on higher ground. It is doubtful whether agricultural uses in flood plains could be prohibited on the basis that floods would injure crops or livestock, since their loss might be regarded as too remote an injury to the public welfare.

REGULATION OR PROHIBITION OF AGRICULTURAL USES

An agricultural use is considered here as a use of land for the production of farm crops, livestock, or livestock products. Agricultural uses may be regulated or prohibited: to prevent soil erosion, to prevent the interference of agricultural with other uses, and to prohibit agriculture in areas where a family cannot make a satisfactory living from this form of land utilization. These reasons are discussed separately, but more than one of them may influence the adoption of a particular regulation.

Prevention of Soil Erosion

Since the use of the police power to prevent or control soil erosion through soil conservation districts is discussed in chapter 3, it will not be detailed here.

Prevention of Interference of Agricultural With Other Uses

Examples of regulations to prevent interference of agricultural with other uses are found in ordinances prohibiting farms in forestry and recreational zones, in certain proposals to prohibit cultivation, and in a suggested regulation to require operating units in parts of the Great Plains to maintain less than a certain ratio of cultivated to range lands. (A prohibition of farming forbids both cultivation and grazing.)

To meet constitutional limitations and to justify such regulation, the use protected by the ordinance should clearly offer more social advantages than the use regulated, and it should be equally clear how the regulated use, unless restricted, will injure the protected use. These questions require a determination of the social as well as the private income and values from various forms of land use. This is a complex matter, but the protection of residences by urban zoning, which presented a somewhat similar problem, is now well established.

Prohibition of farming in forestry zones in the cut-over areas as under current Wisconsin ordinances should be reviewed from a number of different angles before the passage of an ordinance.

If the interference of farming with forestry occurs because enough tracts are farmed to render forest management inefficient by breaking the forest into scattered blocks, is it clear that for this area forestry is a more desirable use of the land than farming?

If the interference is one of fire hazard resulting from the use of fire in land-clearing operations, could this hazard be sufficiently diminished by revision of fire control laws or other measures less drastic than prohibition of farming? (Forest fires due to this cause have greatly decreased in certain counties of Oregon under a 1937 law permitting the creation of zones in which the State will assist farmers with their use of fire for clearing operations.)

Both the Michigan and Wisconsin zoning ordinances prohibit farms in recreational areas. Restrictions such as these are commonly justified on the premise that commercial agriculture destroys a large part of the values of recreational areas by the presence of farm buildings, manure piles, and livestock, together with the clearing of lake shores for crops or pasture. In areas where recreational use is now intensive, lands in their wild state can often command better prices for recreational uses than for farming, and protection from agricultural encroachment may not be needed. But such protection may be desirable where recreation is less highly developed. Protection from interfering commercial uses is also important. Whether recreational uses are entitled to protection or not will depend on anticipated recreational needs and development, as well as on existing circumstances.

Prevention of Agricultural Uses in Areas Where Families Cannot Make a Living From Them.

The history of successive waves of farmers trying to wrest a living from low-grade soils is all too familiar. A cause-and-effect relation between the agricultural use of land and relief costs or human distress must be fairly clear, however, before a regulation prohibiting agriculture for this purpose is justified—the actual relationship of the two in a particular locality should be carefully established. A large number of factors influence the financial success of an individual aside from the quality of his land—

managerial ability, the size of the family, the size and type of farm, and the opportunities for securing supplementary income, opportunities that are found in many marginal areas. In the Great Plains, for example, large crops of wheat are often grown by "sidewalk" farmers who live at a distance from the land and teach school, manage a bank, or engage in some other business. In the cut-over country of the Lake States, many small farmers get a large share of their income from trapping, from the recreation industry, or in other ways. The significance of off-farm employment should thus be carefully appraised before prohibiting agriculture on the ground that families cannot make a living from agricultural uses.

INTERRELATION OF SETTLEMENT AND USE REGULATIONS

Since farmers usually live on the lands they use, agricultural residence and use of land for farming are closely related; and, in some cases, a control of the settlement pattern by forbidding year-round residence will avoid the necessity for a regulation forbidding cultivation or farming. Three counties in Minnesota have recently adopted ordinances relying on settlement control to affect land use and to accomplish the same ends gained by prohibitions of farming and year-round residence in the "forestry" zones of the Wisconsin ordinances.

A control of the settlement pattern in the Lake States will probably prevent farming on most of the lands on which year-round residence is forbidden, since year-round residence is necessary for dairying and general farming, the usual types of farming in that area. In other regions, this relationship may not exist, at least not to the same degree. In the Great Plains, for example, where wheat operations can be carried on at some distance from the permanent residence, control of settlement is likely to have only a limited effect on land use. Conversely, of course, use controls will also act to prevent year-round residence under certain conditions.

But in considering zoning regulations that operate directly on agricultural uses, care should be taken not to confuse the objectives and effects of regulating or prohibiting a use, such as cultivation or grazing, with those of forbidding year-round residence. Farming unaccompanied by year-round residence frequently would not materially affect public service costs. In appraising the need for regulation or prohibition of an agricultural use confusion can be avoided by judging the effect of the restriction on unoccupied land; the need for prohibiting or regulating the land use, and the way in which it should be regulated, can then be considered without reference to the residence of the user.

ADMINISTRATIVE CONSIDERATIONS AND ZONING REGULATIONS

Ease of administration must be considered along with substance when zoning regulations are planned. Differences in the administrative feasibility of zoning regulations are illustrated by the "use" and "residence" types. It is usually easier to ascertain when a nonconforming use exists or has been discontinued in the case of year-round residence than when an agricultural use is concerned. A settler who has abandoned his home may continue some limited farming operations, or a neighbor may pasture livestock or cut wild hay on the land, with or without legal right. In such cases, it is difficult to fix the time when nonconforming use ceases.

To ascertain when a nonconforming use exists under a regulation forbidding year-round residence, by contrast, only one question need be asked, "Where are the people in question now making their domicile or home?" It is not necessary to investigate fields in use nor decide whether lands recently farmed, but not being used on the date of the ordinance, represent a nonconforming use. Forfeiture of a right to a nonconforming residence by a failure to continue it is easy to determine, "Has a family ceased to use its home for a period longer than that allowed by the ordinance?" (This period is 2 years in Minnesota.) Ascertainment of violations of the ordinance by the establishment of new homes, whether in abandoned or new buildings, after the effective date of the ordinance is also comparatively simple.

Control of agricultural use by zoning has been

suggested in parts of the Great Plains as a means of prohibiting cash-crop farming, while permitting grain hay to be produced for livestock feed. Assuming that the regulation could meet constitutional requirements, complicated administrative problems would be encountered. One and the same crop, such as wheat, may be either fed to livestock or sold—its disposition will depend on the quality of the grain and the relative prices of wheat and beef. Prohibiting cash-grain production would thus require administrative determinations of the intent of the operator. The ease with which an operator can shift might make problems of deciding what are nonconforming uses and when they have been discontinued even more difficult in the Great Plains than in the cut-over areas.

Then too, the proposal for regulating land use in the Great Plains by requiring operating units to maintain less than a certain ratio of cultivated to range lands raises a serious administrative problem. Aside from constitutional questions, an annual check-up would be necessary to determine whether or not each operating unit met the terms of the ordinance, since the size of operating units and the amount of crop and range lands leased by each operator often fluctuate from year to year.

Zoning Procedure

The procedures by which an ordinance is drafted, adopted, and enforced are generally specified in the enabling act. Attention is here given to questions that commonly arise in connection with these procedures.

The zoning unit of government

The county is the unit of government commonly used to adopt a zoning ordinance. Other governmental units, such as a town, township, or a specially created district, may exercise zoning powers when a suitable enabling act authorizes them to do so. Under the Colorado act, a part of a county may form a district for zoning purposes and adopt an ordinance; in New England, the towns are the dominant form of local government and already possess some zoning powers.

It has been suggested that soil conservation districts or grazing associations might also be granted zoning authority, though grazing associations, as now organized, are merely a form of corporation and not a governmental unit and thus cannot be granted zoning powers under our constitutions. Under present laws, soil conservation districts cannot adopt ordinances for purposes unconnected with erosion control and soil conservation, although there is no constitutional or other reason why soil conservation districts laws could not be amended to give the districts authority to prohibit year-round residence on particular types of lands.

The question of how conservation ordinances adopted by soil conservation districts for soil conservation or erosion control differ from county zoning ordinances designed to accomplish the same purpose has created much discussion. Fundamentally, these ordinances are closely related, since each is an exercise of the police power of the State to bring about changed land use. It may be said in general, however, that a zoning ordinance merely defines zones within which particular land uses—agriculture, forestry—are permitted or prohibited, while a conservation ordinance specifies types of land use practices—terracing, strip cropping—that are appropriate for particular lands.

Legislatures could, by enacting appropriate statutes, give full "zoning" powers, including the power to control the settlement pattern, to soil conservation districts, and full "conservation ordinance" powers to counties. There is no fundamental legal difference in the kinds of regulations that, under suitable laws, could be adopted by counties and soil conservation districts for soil conservation or erosion control, for controlling settlement, or for other purposes. Similarly, there are no basic distinctions in the administration or enforcement of the ordinances since legislatures could require each to be administered or enforced in the same way. Enforcement procedures of existing soil conservation district laws and zoning enabling acts now differ but these differences could be removed at any time by the enactment of new legislation.

The question whether soil conservation districts should possess "zoning" powers or coun-

ties should possess "conservation ordinance" powers is thus a question of policy. The following points, among others, might be considered in this respect:

(1) Would zoning duplicate or supplement the powers of soil conservation districts for soil conservation or erosion control? (Some 38 States have now authorized the formation of soil conservation districts with authority to adopt and enforce conservation ordinances.)

(2) The unit of government most interested in the effects of the proposed zoning regulation is likely to be the one that can better prepare and enforce an ordinance. Where settlement control to reduce the cost of public services is the primary reason for zoning, this consideration would point to action by counties; where the reason for zoning is for soil conservation or erosion control, this consideration would point to action by soil conservation districts.

PREPARATION OF AN ORDINANCE

Whether action is initiated on a county basis, or on the basis of some other unit of government, the following steps are likely to be taken:

Appointment of a Planning Commission

The zoning process is usually initiated by a county board with the appointment of a planning commission to study the problem and to draft a tentative ordinance. With the exception of Minnesota and Wisconsin, all the rural zoning enabling acts require planning commissions. In Minnesota, the county board, in conjunction with town boards, performs this function, but in Wisconsin a committee of the county board does the planning unless a rural planning board or park commission is already established.

Drafting of Regulations

When a county has been carefully studied and the objectives of zoning in the county have been formulated, a tentative ordinance can be prepared. As many different kinds of zones may be established as are needed. It is generally found easier to draw zone lines on an official map, which is made a part of the ordinance, than to describe them in words. Where a map is used, it should be large enough and detailed enough to leave no doubt whether any lot or land description is within a certain zone.

The language of the regulations themselves should be as clear and simple as possible, and should draw sharp lines between the uses and occupancies permitted and those prohibited in order to eliminate the vagueness that breeds litigation. Some zoning ordinances have stated the uses and occupancies permitted within each zone, while others have enumerated only those that are forbidden. In areas where only one or two activities are to be prohibited, statement of the regulations as prohibitions shortens the ordinance and makes it easier to understand. In general, regulations should probably state what is prohibited or permitted according to the form of expression that will produce the shorter, clearer regulation.

Participation by Other Governmental Units

Although the county has been the unit of government primarily responsible for the preparation of zoning ordinances, the need for participation by other governmental units or agencies has been recognized. This participation takes two forms: (1) Assistance and advice, or (2) review and approval of the ordinance before its adoption.

The first type of participation, which is advisory in character, has been universally regarded as a necessary responsibility of the State agricultural college, the State Planning Board, or some other technical agency. The rural counties most in need of zoning regulations generally cannot afford to hire technical assistance to analyze relevant economic information, to develop legal bases for regulations, or otherwise to aid in the design of an ordinance that will meet local problems most effectively. In Wisconsin, the responsibility for providing these services has been borne mainly by the College of Agriculture and the State Planning Board, although their assistance was not specifically required by the enabling act.

The Michigan State Planning Board is instructed by law to aid in the preparation of ordinances which must also be approved by the planning board before they become effective. This is the only enabling act under which a State

agency is given the power to veto a proposed ordinance. Similar provisions have been proposed in other States, but local feeling about State control has prevented their adoption. Even if State control were required by law, a county is not likely to enact an ordinance that differs very widely from local concepts—if such an ordinance were enacted, responsibility for enforcing it might fall heavily on the State.

In Wisconsin, and perhaps in Minnesota, towns exercise a veto power over the application of ordinances within their boundaries—in Wisconsin an ordinance can become effective only in the towns that approve it; in Minnesota there is some question as to whether the county board can overrule a town that disapproves. This feature of the Wisconsin ordinances has been subject to considerable criticism, but conflicts between county and town interests which might make enforcement difficult are thus kept down. In general, there appears to be some advantage in keeping the adoption of an ordinance at a county level.

Hearings and Referenda

All rural-zoning enabling acts require the county board to hold at least one public hearing before the adoption of an ordinance. Most of them also require that planning commissions hold one or more hearings before the ordinance is finally prepared and submitted to the county board. In this way, anyone who is opposed to the adoption of an ordinance or who believes that it should be prepared in a certain manner may be heard. A general advantage of holding hearings throughout areas to be affected by a zoning ordinance is the participation of as many persons as possible.

No existing enabling act requires a referendum to be held on the question of whether a particular ordinance should be adopted. In Michigan the question of whether the county should consider zoning at all is submitted to a referendum; some difficulty has been encountered with this requirement since it forces people to vote on zoning before any planning work or tentative ordinance is available to explain how zoning will affect their county. Even if the vote is in favor of proceeding under the enabling act, it merely authorizes the county board to investigate the question, and does not require that an ordinance be adopted.

It has been suggested that zoning ordinances might be adopted under a referendum procedure like that required for the adoption of conservation ordinances by soil conservation districts. After a conservation ordinance has been prepared, the question of whether it should be adopted is submitted to a referendum. The governing body of the district is bound by a vote against adoption, but if the result is favorable, the governing body may or may not adopt the ordinance, as it wishes. The primary consideration in the use of a referendum of this type is the observance of democratic processes, and the assurance of public support of regulations adopted. On the other hand, the cost of a referendum may be offset against this advantage; a democratically operated planning program may be preferable. Where a referendum is used and not all persons affected are registered voters, some means should be devised for all to participate.

ADOPTION AND AMENDMENT OF AN ORDINANCE

Adoption of an ordinance may be relatively simple, as when only a resolution of a county board is required, or it may be more complicated. In Michigan, for example, the general law of the State provides that county ordinances must be submitted to the Governor before they can become effective; it is uncertain whether the requirement also applies to zoning ordinances. Questions of this kind may be eliminated by adapting the enabling law to existing statutes.

Notice of the adoption of an ordinance must be given to the general public, as a matter of constitutional law. Enabling acts usually provide for notice by requiring that an ordinance be published in the official county newspaper and filed with some county official, such as the county clerk. If a State has a general law relating to county ordinances, the usual procedure for giving notice may also be applicable to zoning ordinances. The laws of Colorado and Pennsylvania go even further and demand that ordinances be indexed in the books of the recorder of deeds. This practice is contrary to

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the theory of the recording statutes, which is to record only matters affecting land titles, whereas zoning ordinances do not impose any liens on property or otherwise modify its ownership. Every time a zoning ordinance is amended under the Colorado and Pennsylvania type of statutes, even if only a few words are changed, the amendment must be indexed. Although it is not expected that rural ordinances will be amended as frequently as city ordinances, a recording requirement of this kind may prove burdensome. No urban-zoning enabling act contains such a provision.

Regardless of what process of amendment is prescribed by law, it is, of course, essential that it be followed to the letter. Otherwise the amendment will be invalid and unenforceable. Many enabling acts require that the same procedure be followed to amend an ordinance as to adopt it: If a planning commission is required to prepare the original ordinance and to hold hearings before submitting a draft to the county board, it must do the same for amendments. It assumes that the county planning commission is a continuing body. An alternative procedure may, of course, be provided by an enabling act.

THE USE OF BOARDS OF ADJUSTMENT

In urban zoning it is a common practice to establish boards of adjustment (sometimes called boards of appeal) to which landowners may appeal decisions of administrative officers and address petitions for variances to excuse them from the strict letter of the zoning ordinance. Generally speaking, variances are granted where, owing to special conditions, a word-for-word enforcement of the terms of an ordinance would cause landowners unnecessary hardships. A complaint bureau is thus made available to landowners to which they can informally present their complaints and from which they should obtain prompt action. An abuse of the power to grant variances, however, will effectively kill an ordinance. Of the seven comprehensive rural-zoning enabling acts, all but those of California and Washington provide for boards of adjustment.

Boards of adjustment are purely administrative bodies and cannot exercise legislative powers. Hence, they cannot grant a variance that will have the effect of amending the zoning ordinance or altering the zoning maps, but since all courts do not agree as to when a variance exceeds this limitation, it is necessary to examine decisions in each State to determine the powers of the boards.

Some courts hold that a board of adjustment has no authority to allow the establishment of a nonconforming use under any circumstances; the zoning body must rezone the property if such a use is to be permitted. Others allow variances authorizing establishment of nonconforming uses when landowners are clearly subjected to "unnecessary hardships." It has been held that an owner is not entitled to a variance unless he shows, among other things, that his property will not yield a "reasonable return" if used only for purposes allowed by the zoning ordinance, and that his plight is not due to general conditions in the neighborhood. (If due to general conditions, the reasonableness and validity of the ordinance would be questionable.) Neither is an owner entitled to a variance merely because it would permit him to gain a greater income from his property than is possible under the restrictions of the zoning ordinance.

Many of the urban-zoning laws do not specify whether members of the local ordinance-making body may or may not be members of the board of adjustment, although it is generally considered good practice to maintain separate memberships in order to prevent confusion of the legislative and administrative functions. Of the present rural-zoning enabling acts, only Minnesota's provides that the body enacting the ordinance shall also be the board of adjustment, although the Florida soil conservation districts law and a Michigan township zoning enabling act contain similar provisions. The Pennsylvania enabling act provides that no more than half of the board of adjustment may be members of the board of county commissioners; the Michigan law establishes a board of adjustment with half of its members also members of the county planning board, and the other half appointed by the State Planning Commission. No specific provisions for membership of boards of adjustment are found in the Virginia and Wisconsin laws, other

than that members shall be appointed by the board of county commissioners.

Boards of adjustment in urban zoning have operated as a safety valve, preventing legal controversies by making concessions to landowners in cases of unnecessary hardship. By making these concessions subject to certain conditions, boards have also been able to make variant uses conform as closely as possible to their surroundings. It is not apparent, however, whether rural zoning is so analogous to urban that boards of adjustment will be found equally valuable in the administration of rural ordinances.

An urban zoning ordinance is a complex instrument in that it establishes several kinds of districts and permits or excludes numerous uses in each, as well as fixing set-back lines, height limitations, and densities of population, while a strictly rural ordinance may be relatively simple, as when it merely forbids a year-round residence or completely prohibits certain land uses. Because of the greater simplicity of its regulations it may be easier to fit it to existing conditions and to avoid "unnecessary hardships" that require treatment by a board of adjustment. The lack of experience with rural zoning and boards of adjustment makes it difficult to draw definite conclusions as to their usefulness, although in Wisconsin, where ordinances have been in effect since 1933, very few problems requiring their establishment have so far become evident. But where zoning ordinances contain provisions of the urban type, boards of adjustment would clearly be valuable.

THE ENFORCEMENT OF ORDINANCES

The administrative problems of enforcement cannot be overemphasized since an otherwise "perfect" ordinance is of no value if it cannot be given effect. One of the most important factors in the enforcement of an ordinance is the attitude of the people in the locality where it applies. If they understand an ordinance and want it enforced, administrative officials will be active in carrying out its provisions. If they are indifferent or opposed to an ordinance, it is apt to be merely another law of no importance.

The counties that most need zoning are frequently sparsely settled and already experiencing difficulty in securing adequate revenues to pay their operating expenses. These counties clearly cannot afford to employ a new full-time official to enforce a zoning ordinance as might wealthier suburban or intensive agricultural counties; they must rely on existing officials, such as sheriffs, assessors, road supervisors, school supervisors, or others, whose regular duties require them to travel about the county and to be familiar with the location of homes and the uses of lands. (The district or county attorney, who prosecutes criminal actions on behalf of the State and county, actually handles the court proceedings necessary to enforcement, but other officials must provide him with the information necessary to invoke court action. Officials who do not travel, such as county clerks, recorder of deeds, and others, may also have certain enforcement duties to perform complementing those of other officers.) The selection of the officer, or officers, to be responsible for the administration of an ordinance is of great importance but little can be said as yet as to the best choice. Town assessors have been delegated administrative duties by law in Wisconsin, but in Minnesota, the problem has been left to the county board by a provision of the enabling act that empowers the board to "impose enforcement duties on any officer, department, agency, or employee of the county." This provision leaves the board free, whenever it feels that improvements can be made, to shift duties from one officer to another or to impose new duties by amending the ordinance.

Under most statutes, violation of a zoning ordinance is punishable by fine or imprisonment. Experience from the early days of city zoning indicates that criminal prosecutions should be used sparingly until the constitutionality of rural zoning is well established, since a court is likely to give a violator who is facing criminal punishment the benefit of any doubt as to the validity of an ordinance and to hold the ordinance invalid. Just as effective a remedy, in many cases, and one more easily secured, is an injunction against the continuation of a

violation. (Under suitable statutory provisions, a taxpayer, as well as a county, may institute an injunction proceeding.)

As already pointed out, it is sometimes difficult to ascertain just what a nonconforming use is, when it has ceased, and when an ordinance has been violated. These problems may be met, to some extent, by suitable provisions of the ordinances: an ordinance may state what facts shall constitute prima facie evidence of its violation, or of the cessation of a nonconforming use. In Minnesota, Wisconsin, and Pennsylvania, county commissioners are required, upon the adoption of an ordinance, to prepare a list of all nonconforming uses. In Wisconsin, the list is published in a newspaper once a week for 3 weeks, and errors may be objected to by landowners within 60 days. The list then becomes prima facie evidence of the status of nonconforming uses on the effective date of the ordinance, and conversely, of the status of all land not used as nonconforming. The lists prepared in Minnesota and Pennsylvania are not expressly given this legal standing, but would undoubtedly be useful as evidence. Even when such a list is not required by an enabling act, the device is very helpful to those charged with putting these ordinances into effect.

Another enforcement device is to require building or occupancy permits to be secured by persons who wish to build or to use buildings in the county. If agricultural uses were regulated by an ordinance, permits to use land in a certain way might also be required. Although the permit system has operated very successfully in urban zoning, its usefulness in rural areas is not quite so obvious. The question of administrative costs immediately arises, as well as whether the system would receive local support. To b effective, permits would probably have to b required for all land within the county outside cities and villages, even for land in an unrestric ed zone. Whether farmers would consider th formality of securing a permit, to build a ne home or to add to an old one, too much bother hard to say, although the average farmer woul not often require this type of permit. There i more doubt as to whether they would accept th much more burdensome requirement of securin permits annually for agricultural uses. Permi systems are expressly authorized by the laws o Colorado and Pennsylvania, and the power may be implied in the laws of other States.

All zoning enabling acts provide that noncon forming uses existing on the effective date of a ordinance shall be allowed to continue on th theory that this is a necessary constitutional re quirement. The laws of Pennsylvania and Colorado, however, allow boards of county commissioners to provide in a zoning ordinance for the termination of nonconforming uses by specifying a period within which they will be required to cease, or by providing a formula whereby their compulsory termination will be fixed so as to allow the owner to recover or amortize his investment. The enabling acts of Wisconsin and Minnesota state that if a non-conforming use is not continued, but is allowed to cease for a period of time, it may not thereafter be reestablished; and the laws of Colorado and Pennsylvania authorize county commissioners to write similar provisions into zoning ordinances. The removal of the nonconforming use is one of the most difficult of zoning problems. Additional developments in handling it may be expected as zoning comes of age.

State Water Laws

THE WATER consciousness of the West is well expressed in the Declaration of Rights in the Constitution of Wyoming: "Water being essential to industrial prosperity, of limited amount, and easy of diversion from its natural channels, its control must be in the State, which, in providing for its use, shall equally guard all the various interests involved." Similar provisions of other State constitutions and statutes in the West likewise declare that the waters within the State belong to the public, subject to the acquisition of private rights of use.

A water right thus is a right of use; it is generally considered to be real property. It does not, however, represent ownership in the corpus of the water so long as the water is flowing in a natural stream and is not reduced to physical possession, though in many Western States water diverted from its natural course pursuant to a right of use, and reduced to possession by means of artificial devices, is considered to be the personal property of the riparian owner or appropriator.

A water right that may be acquired under State laws attaches to one or more specific purposes. These purposes include public and private beneficial uses for homes and municipalities, agriculture and livestock, industry and mining, power, flood control, navigation, recreation. Such uses of water may be further classified as consumptive and nonconsumptive. A typical consumptive use is irrigation of land (in which, however, only a part of the water diverted for use is actually consumed); and a typical nonconsumptive use is generation of power. Water diverted from a stream for a nonconsumptive purpose must, after that purpose has been served, be returned to the stream (or to another natural watercourse) for the use of others, and must not be wasted or put to some unauthorized use; and the unconsumed portions of any diversion for a lawful purpose, whether consumptive or nonconsumptive, must be made available for other lawful uses.

The water laws with which this chapter is primarily concerned are those of the 17 Western States—the tier of States extending from North Dakota to Texas on the hundredth meridian, and those farther west wherein problems relating to the use of water have been generally most acute and where the development of control has progressed farthest. In the Eastern States, because of the greater abundance of water with respect to land and the generally better distribution of water supplies in relation to available places of use, problems of water control have arisen more frequently in connection with municipal, power, and industrial uses, and the prevention of floods than in direct relation to agriculture. Irrigation has become a factor in comparatively few areas, but is nevertheless locally important in some places. Other

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types of water problems, such as pollution of streams and drainage of water-logged areas, are of widespread importance, particularly in the East, but are not treated in this discussion.

Relation of Water Use to Land Use in the West

Irrigation is essential to the production of ordinary farm crops in the arid portions of the Western States and plays an important part in successful farming in many of the less arid areas. There are vast areas in which practically no form of dependable agriculture is possible without irrigation; there are other extensive areas in which the usual precipitation is adequate for some crops but not for others, and in which the function of irrigation lies in increasing the yields of crops, or in making possible a wider range of crop selections, or in supplementing the deficiencies in "normal" precipitation.

Taking the 17 Western States as a whole, the aggregate of all available water supplies is far short of the quantity that would be required to bring all cultivable lands into crop production and to keep them in production. Good land is so much more abundant than water in the West that the unit of water, rather than the unit of land, is the limiting factor in land use.

AVAILABLE WATER SUPPLIES

The water supplies in the West are replenished principally from the Pacific Ocean—in some areas from the Gulf of Mexico—through the medium of storms which move inland and which deposit the greater part of the moisture content on the high elevations. Part of the rain and melting snow collects in surface channels and eventually forms watercourses which discharge into the sea or into lakes with no surface outlets; part sinks into the ground and eventually augments the supplies of surface streams at lower levels; and part evaporates and is again precipitated elsewhere. Thus the water moves from place to place in ever-recurring cycles, and at some point is concentrated in sufficient volume to be available for use. But the continued availability of any given water supply depends upon its continued replenishment from some other source of supply; hence the right to use water from a particular source has value only if the tributary sources are kept sufficiently intact.

From the standpoint of rights of use, available water supplies may be classified thus:

(1) *Surface waters in watercourses.*—A watercourse is a definite stream in a definite channel with a definite source of supply, and includes the underflow. Also included within this classification are waters flowing through lakes, ponds, and marshes which are integral parts of a stream system. The flow in a watercourse is fed from tributary channels, from diffused surface waters, and from underground sources. At places a surface stream may discharge water into the ground.

(2) *Diffused surface waters* are those which occur on the surface in places other than in watercourses, lakes, or ponds. They may originate from any source, and may be flowing vagrantly over broad lateral areas or occasionally in depressions or channels, or may be standing in bogs or marshes.

(3) *Ground waters* are available water supplies under the surface of the earth. In water-right law they are subdivided into: (*a*) Waters flowing in defined subterranean streams; (*b*) percolating waters, which are waters moving through the interstices of the soil other than in definite subterranean channels; (*c*) underground basins.

(4) *Spring waters* are waters originating from subterranean sources which break out upon the surface of the earth through natural openings in the ground. A well, on the other hand, is an artificial means of gaining access to ground waters.

(5) Other classes of available water supplies include principally (*a*) *surface waters in lakes or ponds,* where no connection with a stream system is evident; and (*b*) *waste waters,* mainly waters which, after having been diverted from sources of supply for use, escape from control in course of distribution or from irrigated lands after application to the soil.

RELATION OF AVAILABLE WATER SUPPLIES TO AVAILABLE PLACES OF USE

The distribution of these available water supplies to available places of beneficial and economic use brings up major physical, economic

and legal problems. Many large streams flow through broad valleys where diversion and distribution of water are comparatively simple, but even in such cases storage of flood flow is necessary to effectuate the greatest use of the stream. Furthermore, large engineering works often have been found necessary in effectuating a redistribution of water and in the interest of a more complete use. In other cases the demand for water in a particular area has so far exceeded the supply that water has been imported from some other watershed, thereby depriving the lands in the latter watershed from access to such supplies. Surface water in the West was originally used close to the sources of supply, but with increasing demands for water and with the development of engineering technique the places of use have been extended farther and farther away.

Ground water in concentrations available for use is found in various basins or other formations which underlie more or less extensive areas of agricultural land. Increasing utilization of such waters has often resulted in overdraughts upon the water supply, or in such lowering of the water table as to make the cost of pumping prohibitive for many users. In various instances ground waters have been exported from the basin for use at distant points.

Many maladjustments in the combined use of water and land have occurred such as: Poor lands have been placed under irrigation because of ready accessibility to sources of supply; promotional projects have included marginal or submarginal as well as good lands in order to show a lower cost of development per acre than would be the case if only the good lands were included. In early decrees some lands were awarded more water than could be used beneficially, although the recent trend has been to hold appropriators to reasonable beneficial use; and owners of lands contiguous to streams, in some riparian doctrine States, have been able to obstruct development by other owners, while not themselves making proper use of the water.

Water-Right Doctrines in the Western States

Water-right doctrines in the western States vary according to the class of water under consideration; and from State to State different rules may apply to the same class of water.

WATERCOURSES

Two diametrically opposite, and therefore conflicting principles govern rights to the use of water in watercourses in various Western States—the riparian doctrine, and the doctrine of prior appropriation for beneficial use.

Riparian Doctrine

Under this doctrine the owner of land contiguous to a stream has certain rights in the flow of the water, solely by virtue of such land ownership. He has the right to take from the stream whatever quantity of water is required for domestic purposes and the watering of domestic animals; and the right to use water therefrom for irrigation purposes, provided such use is reasonable in relation to the needs of all other owners of land riparian to the same source of supply. The original rule was that the riparian owner was entitled to have the stream flow by or through his land as it was wont to flow. A strict enforcement would have prevented the making of any substantial consumptive use of the water; hence modifications were made to permit uses of the character indicated.

The riparian right is not merely an easement or appurtenance of the riparian land, but is part and parcel of the estate. The right, then, being inherent in the ownership of land, is not created by use or lessened or destroyed by nonuse; but it can be lost by adverse possession and use of the water which amount to a clear invasion of the riparian landowner's right of use, just as in case of prescriptive rights against other forms of real property.

The general rule is that land for which riparian rights may be claimed must lie within the watershed of the stream or body of water to which it is contiguous, and that it is further limited in area by the original grant from the Government. Usually land cut off from contiguity to the source of water by subsequent conveyances in which the right is not reserved is thereby deprived permanently of riparian rights.

The riparian doctrine is a part of the common law of England. In the Western States which

adopted the common law, therefore, the riparian doctrine became a part of the local jurisprudence, with the exception of those States in which existing or subsequent constitutional or statutory provisions abrogated that doctrine, or in which the courts decided that it had never been locally recognized and that it was not a part of the State law. The riparian doctrine has never been recognized, or has been specifically abrogated in Arizona, Colorado, Idaho, Montana, Nevada, New Mexico, Utah, and Wyoming. In most of the other Western States the doctrine is recognized in greater or lesser degree. In Oregon it has become little more than a legal fiction. In Oklahoma its status is uncertain.

The general trend in the States which recognize the riparian doctrine has been definitely toward placing greater and greater restrictions upon the exercise of the riparian right. Thus, while originally the only limitation upon use of water for irrigation by a riparian proprietor was that it be reasonable with respect to the requirements of other riparians—there being then no limitation upon reasonableness of use by a riparian proprietor as against an appropriator—most of the States have dedicated to public use waters to which private rights have not attached, and the courts have declared in many recent decisions that the private right of a riparian proprietor does not extend to more water than can be put to reasonable beneficial use on his land. The United States Supreme Court has held that a patent to land in any of the desert-land States, issued after the desert-land legislation, carried of its own force no riparian rights. The result of court decisions in one State in interpreting the desert-land laws has been to reduce materially the acreage of land to which riparian rights apply, and in several States other limitations relate to the time of beginning use of water by riparian owners with respect to the initiation of appropriative rights by others.

Appropriation Doctrine

Under the doctrine of prior appropriation, the first user of water from a stream acquires a priority right to continue the use, and each subsequent user from the same source acquires a right which is junior in priority to all rights theretofore established and is senior to all those acquired at a later date. Contiguity of land to the stream is not a factor. The appropriative right may be acquired for use on any land within the watershed, and under certain limitations for use on land in the watershed of a different stream; the right is perfected by making beneficial use of the water in the irrigation of land or in connection with some other beneficial use. It may be kept in good standing as against other claimants of appropriative rights so long as the beneficial use continues. It is lost through voluntary abandonment or through forfeiture for nonuse over a period of years prescribed by statute. The right can also be lost by adverse use on the part of others as in the case of loss of riparian rights.

The doctrine of appropriation grew from the customs of miners on the public domain, who were originally trespassers but whose rights to use water were subsequently recognized by the Federal Government. The customs so developed were enacted into law in all the 11 Western States, in some cases after the validity of the customs had been recognized by the courts. The early procedure of initiating an appropriation by posting a notice at the point of diversion and filing a copy in the county records, and of proving the completion of the right in a lawsuit possibly many years later has been generally superseded by comprehensive procedure under which rights are perfected by application to the State engineer or other State authority for a permit to appropriate water and by proving beneficial use and acquiring a certificate or license from the State; all intermediate steps being taken under the supervision of the public agency and the complete record filed in one central office.

The more complete State water codes provide not only a centralized procedure for acquiring appropriative water rights, but also procedure for the determination of water rights and for the administration and distribution of water. Rights are determined by the State agency, subject to court review, or upon reference by the court in which suit is brought by individuals to have their water rights adjudicated. The purpose of this procedure is to have

the State represented because of its interest in public waters, and to gain the benefit of expert handling of the complicated physical questions involved. Administration of adjudicated rights is effected through local water commissioners acting under the supervision of the State engineer.

The advantage to the public of a centralized system of water rights lies in the higher degree of order and efficiency which it affords. The system has not become completely effective in all States and has not always operated without confusion, but it has unquestionably been of marked public benefit where given a fair trial and where not hampered by unfavorable court interpretations. The fundamental principles have been shown over a long period of time to be practicable and sound.

Conflicts Between the Two Doctrines

The doctrine of appropriation is given effect to the exclusion of the riparian doctrine in some jurisdictions, but those Western States which recognize the riparian doctrine have adopted the appropriation doctrine as well. Inasmuch as these two rules of law are diametrically opposed—the appropriative right being an exclusive right to the use of a specific quantity of water, and the riparian right being correlative with the rights of all other riparian owners and necessarily varying in measurement from time to time according to the current extent of the reasonable requirements of all riparian lands—it is inevitable that in States following the dual system the conflicts between riparian and appropriative claimants should have been many and serious, and that the resulting litigation should have been extensive. Generally speaking, in a jurisdiction in which the riparian rule is paramount, the riparian right is coequal with that of every other riparian owner, is inferior to appropriative rights previously acquired on public land, and is superior to appropriative rights subsequently initiated.

The riparian rule is a judicial rule. Except for a few statutes which declare that the owner of land owns the flowing water thereon, the riparian doctrine has been developed in its entirety in the courts, and legislation on the subject has dealt with the abrogation or limitation of the doctrine. The doctrine of appropriation, on the other hand, is based upon specific statutes which originally codified local customs, and the court decisions have dealt principally with interpretations of the customs and laws and with constitutional questions. The task of reconciling conflicting riparian and appropriative rights has been left principally to the courts, with little guidance from the legislatures except from the very few which have defined the extent of the riparian right.

Conflicts on specific streams are adjusted by defining the lands having riparian rights, the time at which such rights accrued, and the priorities of appropriative claimants, and by declaring what groups of riparian lands have rights either superior or inferior to certain groups of appropriative rights. Administration of such a decree is difficult, owing to the fact that the quantity of water which a riparian owner may claim at a given time is variable, rather than definite as in the case of an appropriator. The Oregon courts have overcome this difficulty in statutory adjudications by decreeing to the riparian claimant the specific quantity of water which he has applied to beneficial use under a given date of priority, thus placing all such decreed rights on an essentially appropriative basis.

Comparative Utility of the Doctrines in Effectuating Better Land Use

In the more arid areas the riparian doctrine is unsuited to water development for good land use; for that reason it has been discarded in various States and modified in others. Had this been the only rule, lands contiguous to streams would have had the prior claim, and diversions for use on nonriparian lands would have been inferior in right, regardless of relative productive capacities. It is true that proper use of water on riparian land of good quality is as much in the public interest as proper use on nonriparian land. From the standpoint of public interest, the weakness of the riparian rule, in a State having an abundance of available land and a deficiency in available water supplies, has been in the superiority of right accorded under the

rule simply because land is contiguous to a natural stream, and, in the earlier phases of application of the rule, the absence of any limitation to beneficial use. Many courts in upholding the riparian doctrine have viewed the subject primarily from the standpoint of private property rights; a recognition of public interest has been in general a slow and difficult process, though a clearly developing one.

The doctrine of appropriation, though far from perfect, has proved to be more workable than the riparian doctrine in the development and utilization of water resources. It is far less restricted in application to lands, it affords greater protection to investments in water enterprises, and it includes the essential element of beneficial use and has done so from early times. Furthermore, the trend now and for sometime past has been toward adding the term "reasonable" or sometimes "economical" to "beneficial use of water."

Reasonableness is of course a relative and highly variable term, depending upon the circumstances of each case. The aim of this requirement is to impose the consideration of public interest upon the use of water. Nevertheless, in determining what is a reasonable use in a given case, the courts have accorded great weight to local customs which may or may not be the most efficient methods of use.

DIFFUSED SURFACE WATERS

Rules governing the right to use diffused surface waters, as distinguished from the right of a landowner to prevent such waters from entering his land, have been developed in a comparatively small number of judicial controversies which have arisen between landowners, or between landowners and others who claimed to have appropriated the waters directly. Principles governing the rights of owners of land on which such waters occur, as against the claims of appropriators from streams to which the diffused waters would flow if not interfered with, have not yet been established, either by the courts or by the State legislatures.

The law of diffused surface waters for the most part is distinct from the law of watercourses. Riparian rights do not attach to diffused surface waters, and in the absence of a special statute appropriative rights have been held not to attach to such waters. Special statutes relating to priorities in the use of waste, seepage, and spring waters have, however, been construed in certain cases as applicable to diffused surface waters which were differentiated in those cases from running streams; but while statutes gave the landowners the prior right of use, this statutory preference was not in issue in these cases, and the right of the landowner to use the water as against an attempted appropriator was not passed upon. Where the right of a landowner to utilize diffused surface waters on his land has been directly in issue, the Western court decisions, though not numerous, have been to the effect that he "owns" such waters so long as they remain on his land and may appropriate them even though by so doing he deprives a lower landowner of the opportunity of receiving and using them.

Regulation of the flow of diffused surface waters on a large scale throughout a watershed may substantially affect, at least temporarily, the flows in the surface stream system which drains the watershed, and substantial consumptive uses of such waters before they enter stream channels will necessarily lessen the stream flows. Control over diffused waters, in the interest of the public welfare in connection with programs of water shed protection, requires coordination of the rights of owners of land on which the waters occur with the rights of the stream appropriators. This matter is discussed in greater detail below.

GROUND WATERS

The courts generally have differentiated between ground waters flowing in defined subterranean streams and ground waters not confined to definite channels, and they have applied different rules to rights of use of waters in the two classes. This distinction made by the courts has been criticized by some leading ground-water hydrologists as being at variance with the facts in litigated cases. However, the legal distinctions form an important part of ground-water law.

Definite Underground Streams

The rules applicable to surface watercourses apply equally to definite streams under the surface. The riparian and appropriation doctrines, to whatever extent they govern rights to the use of surface streams in any particular jurisdiction, control rights in underground streams as well. This is not a controversial question in any Western State.

The underflow of a stream is a part of the stream; hence the same rules of law apply to the surface and subsurface portions.

Percolating Waters

Principles governing the use of percolating waters have been developed mainly by the courts, although within comparatively recent years several legislatures have spoken on the subject. There are three principal doctrines, as follows:

Absolute ownership.—According to the English or common-law rule, the owner of land is the absolute owner of percolating waters under his land. Under this doctrine, a landowner may not only abstract water from his land for any legitimate enterprise, but in so doing may exhaust the common supply available for other lands overlying the same water-bearing strata without liability for injury resulting to the owners of other lands, and regardless of the length of time other landowners may have been using the ground water beneficially. This is the rule now in some of the Western States, either in this strict form or subject to some qualifications.

Ownership subject to reasonable use.—The injuries and injustices which resulted from unreasonable withdrawals of ground waters from a common supply have led the courts of some States to impose upon each landowner a measure of reasonable use; that is, a requirement that the use of the water upon his land be reasonable in relation to the needs of the owners of other overlying lands. The "correlative doctrine" is essentially one form of the American doctrine of reasonable use; as developed in the California court decisions, it entitles the landowners to an apportionment of a common ground-water supply in the event of shortage. The export of ground water to a point outside the basin or area in which it is found, at a time when the owners of other lands within the basin need the water, is held to be an unreasonable use and therefore is not permitted under this rule unless the one taking the water away has acquired a prescriptive right to do so. The doctrine of reasonable use is the rule in such Western States as Washington, Utah, Colorado, Nebraska, and North Dakota.

Appropriation.—Several western legislatures have subjected all percolating waters or designated classes of ground waters to appropriation, and the courts of two other States, in the absence of statute, have recognized the appropriability of certain percolating waters under certain circumstances. The growth of the appropriative principle in this field has been slow, owing to the well-founded principle of absolute or modified ownership in American jurisprudence and to the great practical difficulty in identifying percolating waters and establishing their origin, destination, boundaries, and quantity and rate of flow. But technique has been developed for the reasonable ascertainment of these characteristics, and the ground-water appropriation statutes are being actively administered.

The New Mexico statute is probably most widely known. This was not the first of the ground-water laws, but was the first to be administered on a substantial scale. Under this act the "waters of underground streams, channels, artesian basins, reservoirs or lakes, having reasonably ascertainable boundaries," are declared to be public waters and subject to appropriation. This classification brings under the statute those accumulations of ground water whose characteristics are subject to analysis, and while it excludes vagrant flows, it doubtless covers most ground-water supplies that are susceptible to practical use and certainly those sources that can be effectively administered. It parallels in general the classification of waters in surface watercourses, for a "body" of percolating water moving through the interstices of the soil over a wide area with definite and ascertainable boundaries may be likened to an underground stream.

The Oregon statute has adopted this classification, applicable to the eastern portion of the

State, while the Nevada and Utah statutes relate to ground waters generally. An Idaho statute provides that "subterranean" waters may be appropriated and the courts of that State have recognized the rule.

Spring Waters

Springs that form the source or part of the source of a watercourse are subject to the law of watercourses—riparian or appropriation doctrines, or both—and the rights to the use of such springs are coordinated with rights to waters in the stream itself. A landowner has no exclusive rights in springs which feed a definite stream, just because the spring water comes naturally to the surface on his land.

Springs that do not contribute to the supply of a watercourse or which otherwise do not flow from the land upon which they rise, if supplied by percolating waters, ordinarily belong to the owner of the land on which they rise. This is a matter of statute in some States and the rule has been stated by the courts in various others. There are exceptions in a few States, however, and the continued applicability of the rule in a State which has dedicated all ground water to the public, is open to question. A spring is simply ground water which has come to the surface, so that the landowner's right to the use of the spring would ordinarily be no greater than his right to the use of ground water which feeds the spring.

Other Classes

Rights to the use of surface waters in lakes or ponds, where the evidence fails to indicate any connection with a surface-stream system, are subject to the law of watercourses in the particular jurisdiction. The difference between the rule applicable to such body of water and that applicable to a lake which is an integral part of a stream system, is that in the latter case the rights to the lake are correlated with all those on the entire stream system, while those pertaining to an independent lake form a separate group of priorities or other claims.

Waste water may be appropriated, within limitations, before it has returned to the stream from which originally diverted, but as a general rule the original user is under no obligation to continue the waste.

Water Law in the Eastern States

The riparian doctrine prevails in the East. A few States have statutes dealing with the acquirement of water rights, but the doctrine of prior appropriation of publicly owned water supplies, in the form highly developed throughout the West, has not yet been introduced in the East. As to percolating ground waters, some States follow the doctrine of absolute ownership and some the American rule of reasonable use; the latter rule was first announced in a New Hampshire decision 40 years before it was accepted in any far Western State.

At least some of the aspects of the western situation discussed in this chapter will apply likewise to eastern problems. On the whole, where the necessity for public control over rights to the use of water is in issue, the geographic location of a State and its classification as generally humid or generally semiarid is less important than the relation in that State of available water supplies to lands requiring more moisture than falls directly upon them, or the relation of surface and ground-water supplies to opportunities for industrial or public uses. For example, the issue of public control has been raised by increasing uses of ground waters underlying certain metropolitan areas. Likewise, in an Arkansas region where rice production depends upon irrigation notwithstanding the classification of Arkansas as a humid State, the question of possible legislation regarding relative water rights is giving concern at this time.

Problems in Coordinating Water Use with Land Use

Analysis of the Western water laws and inquiry into experiences in administering them have disclosed the existence of a rather large number of problems, some of major and others of minor importance. The following pages call attention to the chief of these and indicate the approach taken and the ends in view in attempting to effectuate better land use under existing water law.

PROCEDURE UNDER WATER CODES

The "water codes" of most of the Western States follow a general pattern. This pattern is fairly uniform so far as the procedure for appropriating water is concerned; less uniform in the administration of water; and still less uniform in the determination and adjudication of appropriative rights. (Lack of uniformity in procedure is not in itself a problem, except in connection with interstate projects; and even there it is the differences in basic doctrines that cause most concern. Certain procedures are unquestionably more efficient than others; but in some States the present systems have been established for a half century or more; they have strong local appeal or other special value; and even where locally acknowledged to be imperfect, little or no disposition or even willingness to alter long-seasoned methods now in working order is evident at this time.)

The statutes of every Western State except Montana require that water be appropriated only upon application to the State engineer or other officer or agency. Montana has adopted different procedures for acquiring rights in adjudicated and unadjudicated streams, but maintains decentralized procedure in both cases. In Kansas, centralized procedure is part of the statutes, though complete administration has not yet become effective. Long experience has shown definitely that centralized procedure is productive of better results than the old system of posting and filing notices without record of beneficial use.

Most of the statutes provide that water may be appropriated in the manner therein provided and not otherwise, and the courts have generally upheld the statutory procedure as exclusive. The Idaho Supreme Court, however, in numerous decisions, has held that a valid appropriative right may be acquired without compliance with the statute. In that State, accordingly, an appropriator may apply for a permit to appropriate water or may take it without permit, as he chooses, provided he respects prior appropriations in the latter case. If it were desired to change this interpretation of the Idaho court, an amendment to the State constitution might be necessary.

Statutory procedure for determination of water rights is an improvement over the former condition which permitted a multiplicity of court actions concerning the waters of a stream system, each involving a very few claimants. In the majority of the Western States, a statutory procedure for determining water rights has been provided but in some jurisdictions it has been little used, either because of the existence of old decrees or because development has been slow and contests infrequent. In three States the courts have declared the enabling legislation unconstitutional; in South Dakota the law has recently been revised to meet the court's objection.

Administration of water rights is provided by most of the statutes, but is effective in only some of the States. Various streams are administered by commissioners appointed by and responsible to the courts, rather than under the supervision of the State engineer. In most States, extension of administration under a State agency has probably kept pace with the demand for it.

CONFLICT BETWEEN RIPARIAN AND APPROPRIATIVE RIGHTS

Adherence to the riparian doctrine as the paramount rule of water law in States having large opportunities for irrigation development has caused much dissension, for the riparian rule has not been adequate to meet the need of best use of land and water resources; consequently, its influence has been generally more obstructive than constructive. Some States have turned without reservation to the appropriation doctrine as best suited to their physical conditions and avoided conflicts between riparian and appropriative claimants by abrogating the riparian rule completely.

The California courts early made the riparian doctrine paramount, but upheld, as against riparian proprietors, appropriative rights to waters on public lands and prescriptive rights; the greater parts of California lands irrigated from streams now have appropriative and prescriptive rights. But development has progressed in spite of the riparian doctrine rather than because of it; the conflict between the two systems has covered more than 50 years. Although th

voters of the State have adopted a constitutional amendment limiting riparians to reasonable use and the Supreme Court has upheld the amendment, a riparian owner may still obtain a declaratory decree defining his right which operates to prevent its loss by adverse use whether or not he makes any use of the water himself.

The courts of some other riparian-doctrine States have been more sympathetic to the appropriator in his conflict with riparian proprietors. For example, under the Nebraska decisions, the riparian owner must have made actual use of water prior to the acquisition of appropriative rights by others, if he is to recover substantial damages for being deprived of the future use of water. The Washington courts have held that riparian rights are only those which can be beneficially used within a reasonable time. The courts of Texas have ruled that riparian rights attach only to the normal flow and underflow of streams. Oregon, both by virtue of legislation and favorable court interpretations, has eliminated the riparian doctrine from stream administration, even though the courts originally accepted the doctrine.

The Kansas Supreme Court, on the other hand, has recently emphasized the paramount position of the riparian owner and has made statements which raise questions as to the practical application of the appropriation doctrine under the present rule in that State.

Since the water master is an administrator of determined rights, not a judicial officer charged with the determination of ever-varying water requirements and relatively reasonable uses of water, administration of the waters of a stream obviously is not practical unless the scheduled rights are definite and therefore enforceable by the water master. The riparian States which have gone farthest in bringing riparian claims under practicable administration, in coordination with rather than in conflict with appropriative rights, have done so by placing the riparian rights as nearly as possible on the same level as the appropriative right. Progress is stripping the riparian doctrine of its rigors and adjustment between the formerly irreconcilable conflicts has been made possible variously by constitutional amendment, legislation, and court decisions.

CONTROL OF GROUND WATERS

Public control over rights to the use of ground waters is a comparatively recent development and as yet is effective in very few States. Initiation of the principle has been vigorously opposed in some States by vested interests, by those who doubted the efficacy of technique for determining the characteristics of ground water, and by those concerned over the constitutionality of proposed legislation.

Ground-Water Legislation

The essential principle has been upheld in New Mexico, however, and the statute is being actively administered there. The enabling acts in other States have not yet been passed upon. Considerable interest has been shown in recent years and legislative proposals have been made in several States where no adequate public control yet exists. (This discussion deals with rights to the use of ground waters, and not to the regulation of artesian wells in the interest of preventing waste, concerning which most Western States have more or less adequate statutes.)

The doctrine of reasonable use, and its variation called the correlative doctrine, represent a distinct advance over the rule of absolute ownership, under which one landowner may injure his neighbor's water right without liability. The reasonable-use rule protects each proprietor against unreasonableness on the part of his neighbors; but it affords no protection whatever to existing developments when the common water supply becomes so depleted by successive pumping installations as to become insufficient for the requirements of all overlying lands. Since priority of use is not a factor, landowners who have been making use of the underlying ground water for many years may find the supply so depleted, or the water level so lowered, as the result of later developments within the area, as to make it impossible or uneconomic for them to continue pumping.

The appropriation doctrine, on the contrary, protects the users in the order of their priorities

of use. (Protection of means of diversion, under administrative statutes, is noted below.) On the whole, the administrative control of ground waters based upon prior appropriation, where the safe yield of aquifers is scientifically determined in advance of withdrawals, appears to offer a sound and practicable method of effectuating economic use of ground waters.

The ground-water-appropriation statutes were enacted in States in which the courts had previously recognized, expressly or impliedly, ownership of percolating water by the owner of overlying land; although the Utah court had progressed from this to the correlative doctrine and thence to the appropriation doctrine before the statute was passed. Preexisting uses have been protected by allowing the user to file a claim of right, which when substantiated becomes a recognized right of use, prior in right to appropriations made under the statute. Vested rights of use are thus taken care of; but the constitutional question that has arisen is whether owners of land overlying a ground water area have vested rights which they have never put to use, such rights resting solely upon statements in court decisions to the effect that the landowner owns the ground water.

Where such decisions have been few and readily distinguishable on the facts, they may carry no more weight in determining the validity of the ground-water law of a given State than they did in New Mexico, particularly if the statute is framed to exclude small diffused flows of uncertain area and extent. The difficulty of establishing such a statute will be measurably greater in a State in which ground water development is extensive and the investments are great, and in which the court decisions are numerous and positive as to the extent of the landowner's right.

A ground-water statute appears to offer more to successful administration under the appropriation doctrine than under doctrines of private ownership of water. The State undoubtedly has the power to regulate uses of water, however, whether the water itself be publicly or privately owned, so that even long-established doctrines of private ownership of ground water should present no insuperable obstacle to public regulation in the interest of conservation and better use.

Protection in Means of Diversion

The question has arisen as to whether an appropriator under a ground-water administrative statute is entitled to enjoin a later diversion from the same source which results in so lowering the common ground water level as to force higher costs of pumping upon the prior appropriator.

The decisions concerning surface streams have accorded the appropriator substantial protection in a means of diversion that was held to be reasonable under all the circumstances, and have denied protection otherwise. If the prior appropriator's method of diversion is reasonable, junior appropriators must compensate him for the cost of any substantial change required for the accommodation of later comers. The few decisions on maintenance of ground-water pumping diversions, from four States, have held to the same effect. As some lowering of the water table or reduction of artesian pressure follows each added diversion of ground water, the logical effect of such ruling is that every appropriator must contribute to the added cost of all appropriations which antedate his own.

None of these decisions has arisen under administrative procedure applying specially to ground waters and including determinations by the State engineer of unappropriated waters in the proposed source of supply. The appropriator under such a statute has little basis for insisting upon maintenance of the water level at the point at which he first pumps it, provided his appropriation can be satisfied within the conditions determined by the State engineer as affecting safe yield. But there are no court decisions squarely in point and the statutes are silent on this matter.

Correlation of Rights to Surface and Ground Waters

The flow of surface streams depends in large measure upon accretions from ground-water supplies, and ground waters in various areas are replenished by "losses" from surface streams. Rights to the use of water in a given stream may therefore be materially injured by withdrawals

from the ground-water reservoirs which contribute to the stream, and vice versa. Protection of water rights generally means, consequently, that all rights to a common or interconnected surface and ground-water supply must be coordinated. Correlation is just as necessary in such case as it is in the case of rights on the main stem of a stream and those on each of its tributaries.

Rational coordination of such interdependent rights has been attempted in some States and disregarded in others. In certain States the approach has been through the courts. For example, without statutory guidance, the Supreme Court of Colorado has placed all rights to the use of tributary ground waters on the same appropriative basis as that of the surface stream system of which they form a physical part, priorities of use governing throughout. The California Supreme Court likewise has correlated rights to all surface and subterranean waters which form part of a common supply, on a basis of reasonable use, although the coordination there includes riparian, appropriative, and correlative rights and hence is more complicated than if all rights were on the same basis. Other States have correlated all rights on an appropriative basis by statute—for example, Nevada and Utah.

There are States, however, in which one basis of right of use applies to surface streams and an irreconcilable basis of right of use applies to percolating waters which feed the stream. Where, as in certain States, exclusive rights of appropriation apply to a surface stream and all its sources, yet the owner of land overlying percolating waters which form a source of the stream "owns" such waters absolutely while passing through his land, there is no basis of adjustment in case of controversy between the two claimants. When controversies arise, adjustment will be possible only by modifying one principle or the other, or both.

DIFFUSED SURFACE WATERS

There is very little legislation on the subject of rights to the use of diffused surface waters. Controversies decided in the courts have not yet covered the claims of appropriators of stream water that their rights were being impaired by interference with the flow of diffused surface waters which constitute part of the supply of the stream. Here, as in case of tributary ground waters in some States, are two principles irreconcilable without modification—ownership by the landowner of diffused surface waters while on his land, and protection of the appropriative right on all sources which go to make up the flow of the stream. As contrasted with interconnected surface and ground waters, which have been correlated in some States, coordination in case of interconnected diffused surface waters and watercourses does not appear to have been attempted in any State.

Precedent for such coordination is to be found in the handling of interconnected surface and ground waters by the California Supreme Court. As applied to the situation here considered, the landowner would not be considered as "owning" the diffused surface waters on his land (private ownership of waters in their natural state is out of line with the philosophy of water law generally), but would be entitled to make a reasonable beneficial use of such waters in connection with his land. In all States, claimants of use of waters of the stream are also held to reasonable beneficial use in case of appropriative rights and in case of riparian rights in jurisdictions in which coordination between the two doctrines has been attempted. Thus all rights to the stream and its tributary diffused waters would be measured by reasonable beneficial use, and in arriving at the adjustment the requirements of the entire watershed would be considered.

INFLEXIBLE FEATURES OF THE APPROPRIATION DOCTRINE

The Question of Strict Priority

The doctrine of appropriation embodies the essential element of priority—"first in time, first in right."

It is fundamental that each appropriation is prior in right to all appropriations subsequently made; that priority is not affected by location of the diversion works, that is, whether near the headwaters of the stream or near its mouth or at any intermediate point; and that the right

attaches to all waters naturally flowing above the point of diversion in the stream system upon which the right is acquired. From these premises follows inevitably the rule that as against subsequent appropriators, the appropriator has an exclusive right to have the stream flow to his point of diversion in whatever volume is necessary to supply him at that point the quantity of water covered by his appropriation. Thus, an appropriation of, say, 5 second-feet will be protected against such interference with the flow by junior appropriators upstream as will result in a flow of less than 5 second-feet at his point of diversion, even though to yield that quantity at this point it is necessary to release 100 second-feet upstream, the balance of 95 second-feet being lost in the channel in transit.

The doctrine of appropriation was adopted throughout the West not only to utilize water more completely and beneficially than appeared possible under the riparian doctrine, but to afford protection to those who invested their capital and devoted their labor to the construction of irrigation works. It was recognized that projects would not generally be built without assurance of continued protection against interference with the diversion of water for the beneficial use of which expensive works had been constructed. Unquestionably the existence of this basic rule of water law has been an essential factor in encouraging the present widespread use of water for irrigation in the West.

On the other hand, the rule of strict priority has led to some cases in which the priority has appeared unreasonable, such as that in the foregoing example of the appropriation of 5 second-feet on a stream channel subject to high natural losses. The courts have held that in such cases junior appropriators may salvage the losses, but that in so doing the senior appropriator must be protected, and if the junior appropriators wish to divert and use the stream flow they must make available to the senior a substitute water supply of equivalent quantity and quality. This is what some courts have recently termed a "physical solution" in the interest of the public welfare. It may also be pointed out here that the loss of 95 second-feet in the cited example may not always be a real loss to the public, for the water which thus disappeared from sight may reappear in the channel at a lower point or may augment the ground-water supply in a favorable locality and thus become available for uses which may be equally beneficial from the standpoint of the public to those proposed above the area of channel loss. Where the loss of water in naturally supplying an early priority is great and permanent, and where the cost of making a substitute supply available is out of proportion to the benefits which will accrue from salvaging the water, then the early priority may become truly unreasonable in relation to the public need for water in that community.

Preference in Time of Drought

The question of unreasonableness of priority is more likely to become acute during periods of protracted drought, when users accustomed to having water in their canals in normal or even moderately subnormal years must watch the water flow past their locked headgates month after month to supply early priorities downstream, while their own crops die from lack of moisture.

The rule of strict priority is put to a severe test under such circumstances, for it admits of no exception in times of water scarcity but on the contrary was designed to protect the first user under just such an eventuality. But the rule has been set aside temporarily in a great emergency and the available water distributed where it would do the most good, with the implied consent of the public. This finds support in the theory of beneficial use which is the basis of the doctrine of appropriation. It may be obvious under some circumstances that higher beneficial use of the total stream flow may be achieved by devoting *some* of the flow to saving crops of the junior appropriator than by giving it *all* to the senior to add slightly to his crop yields. The compensation thus owed to the senior appropriator for the amount of his actual loss might be far outweighed by the gain in saving the crops of the junior appropriator from complete destruction.

The constitutions of three Western States—Colorado, Idaho, and Nebraska—provide that when the waters of a natural stream are not

sufficient for all those desiring to use them, those using the water for domestic purposes shall have the preference over claimants for any other purpose, and those using water for agricultural purposes shall have preference over users for manufacturing purposes. Exercise of the preference is made expressly subject to the payment of compensation in the Idaho and Nebraska constitutional provisions, and in Colorado the courts have so interpreted the provision. The statutes of two additional States, Oregon and Utah, contain substantially the same language but without mentioning the necessity for compensation, this question apparently having not yet been before the courts.

Other Preferences

Preferences in the use of water other than those applicable in times of scarcity are found in the constitutions or statutes of most Western States. They involve the following questions:

(1) Denial of the right to appropriate water where the proposed appropriation would not best serve the public interest. A few Supreme Court decisions on this point have upheld administrative action in denying applications to appropriate water, and a few others have held that when there is unappropriated water in the proposed source and all statutory requirements have been met, the applicant is entitled as a matter of law to have his application approved. The constitutions of a few States provide that the right to appropriate water shall never be denied, or that the right to deny an application shall be governed by certain considerations.

(2) Choice between pending applications to appropriate water to the exclusion of one applicant or to the subordination of his priority. The statutes of a few States list the uses of water which shall have preference in such cases, domestic and municipal uses being first in order. Administrative action in choosing between conflicting applications has been upheld in the few cases which have reached the supreme courts.

(3) Reservation of water for the future requirements of growing municipalities. This is done in certain States at the time the municipality makes application to appropriate water; although in one State all appropriations of water made after the enactment, except for domestic and municipal purposes, are subordinate to future appropriations by municipalities, without compensation.

(4) Compensation for the impairment of a vested right in favor of a preferred right. In several States the exercise of a preferred right depends upon the payment of compensation for the impairment or extinguishment of an established inferior right. In others, compensation is not mentioned in the constitutional or statutory provisions, or is specifically denied in the legislation or is limited as affecting future appropriations.

BENEFICIAL USE OF WATER IN RELATION TO BETTER LAND USE

A result of either the appropriation or the riparian doctrine is to assign, for use on specific lands, water which might conceivably be put to better use on more favorably situated lands of higher quality. The appropriation doctrine has improved upon the riparian rule in measurably enlarging the opportunities for better land use, inasmuch as lands may be selected for irrigation under appropriative rights, whereas the riparian right applies only to riparian land regardless of quality. Nevertheless, the appropriative right generally attaches to or becomes appurtenant to specific lands by virtue of perfection of the right thereon, although in most States it may be transferred to other lands at the will of the appropriator, usually by following a statutory procedure, and it is a property right which under existing law remains intact so long as the water is used beneficially, even though the public interest might have been better served had the right attached to some other place of use.

The discussion does not purport to be an inventory of land uses under irrigation. Nor should it give the impression that maladjustments of water use to land use are the general rule, or that mistakes in the location of irrigation projects have been very general: such sweeping statements will not bear analysis. The purpose is to bring out the fact that problems of land use under irrigation have often arisen and that

instances of maladjustment are easy to find—some of minor importance and others of such serious magnitude as to challenge earnest efforts at correction—and to show to what extent these problems have grown from or have been otherwise affected by the laws governing the use of water.

The makers of western water law have unquestionably striven to make possible a complete utilization of water resources; but the water laws do not stress the element of better land use. The laws of prior appropriation do stress the necessity for beneficial use of water; and beyond that they simply make possible the transfer of water rights (in most States) from poor to good lands, or to lands in connection with which a higher duty of water is possible should the holders of the appropriative rights wish to make the exchange.

Promotion of irrigation agriculture was the aim of the early appropriative principle. Water was plentiful 70 or 80 years ago in relation to the demand; diversions from streams for the irrigation of favorably situated lands were easy and inexpensive; and neither custom nor law made any demand that the water be applied only to the best available lands. Not only that, but wasteful methods of use were common in many communities in the earlier years. Waste of water was never sanctioned by the appropriation doctrine itself, however; and with increasing demands upon available supplies and the necessity for conservation to meet the needs of the public, higher standards of use have gradually been imposed by both legislatures and courts.

One recent decision stated that the abandonment of reasonably efficient diversion systems is not justified by the necessity of minimizing the waste of water resources, important as that is, where the expense of new systems would not be warranted by the benefit from actual saving of water. This is a practical view to take of the desirability of change—that the benefit be measured in relation to the cost. A limiting factor to change in irrigation practice is necessarily the extra cost to the irrigator where such cost proves to be considerable and without compensating benefit. But other courts have not discussed such considerations. They have simply declined to interfere with prevailing customs of diverting and applying water, unless flagrant waste was evident, and some of them seem to have been rather skeptical of the value to the public of the "latest and most approved scientific methods," at least where the possible scrapping of long-established practices was involved.

On the whole, beneficial use of water apparently was not intended in the statutes to mean "best possible use"; it has certainly not been so construed. On the basis of beneficial use, water rights have been acquired and adjudicated throughout the West, irrigation projects both large and small constructed, lands leveled and ditched, farm buildings erected, and in various areas orchards brought into bearing. This has been done at enormous aggregate expense—comparatively small in some localities, and comparatively large in others. Large-scale readjustments, such as the concentration into a few areas of water uses now scattered throughout an entire stream system, however desirable they might be in a given case from the standpoint of the public at large, must take into account the existence of long-established private property rights in both water and land which in a given area may have acquired great aggregate value and the maintenance of which is a matter of deep public concern.

Local readjustments have taken place from time to time as the result of economic forces. Lands that have proved to be unproductive have been abandoned and the appurtenant water rights transferred elsewhere or released for further appropriation. Lands that become waterlogged or alkaline are taken out of production pending reclamation through drainage. In the financial readjustment of enterprises which have defaulted on their obligations, the approved procedure is to classify the lands and allocate water only to those capable of successful cultivation; and it is now widely recognized that this procedure should precede the construction of an irrigation project. And in the use of ground-water supplies, lands to which it has proved uneconomic to pump water have yielded in many instances to lands more favorably situated.

POSSIBLE MODIFICATION OF INFLEXIBLE FEATURES

It is evident that the doctrine of prior appropriation has been a long step forward in the attainment of better land use in the West. It also appears that in some instances its inflexibility has led to results out of line with the best use of water and land. Writers have pointed out that the doctrine as interpreted by the courts has not been altogether satisfactory for complex conditions, and that there is a tendency toward adjustment of uses and modification in the interest of a more uniform and flexible distribution of water from the larger stream systems.[4]

So far as the Federal and State courts of last resort are concerned, little relaxation of the rule of strict priority of established appropriative rights as against each other is apparent from the decisions during the present century, aside from the Supreme Court decisions concerning the equitable allocations between States and upholding interstate compacts which transcend local rules of water law, and the increasing insistence in all courts upon reasonableness in the exercise of water rights. The principle of priority, within the general doctrine of appropriation, governs the State decisions now, as formerly.

But it may be observed that the appropriation doctrine was created by State law, and that State law should be adequate to correct abuses when and as they arise. Unquestionably the State may regulate uses of water in the interest of the public welfare, as it may regulate uses of other forms of real property, and to this end it may define beneficial use of water. Certain States have employed this power successfully to abridge or govern the exercise of the riparian right—Oregon by statute and California by constitutional amendment—and further limitations upon the exercise of the appropriative right in the interest of the public welfare are well within the power of the State to impose.

[4] Wiel, S. C., "Water Rights in the Western States," 3d ed., vol. I, p. 329 et seq.

Wiel, S. C., "Fifty Years of Water Law," Harvard Law Review, vol. L, No. 2, pp. 252–304.

Conkling, Harold, "Administrative Control of Underground Water: Physical and Legal Aspects."

Proceedings American Society of Civil Engineers, vol. 62, No. 4, pp. 485–516, April 1936.

In other words, although the revision of standards which govern long-established uses of property is a slow process, unreasonableness in priority rights to the use of water, should that become at any time a great problem, can be overcome and measures for effectuating still better land use can be devised by statute wherever the interests of the public clearly demand it. And in the field of operation of irrigation enterprises, procedure governing assessments and rules and regulations affords some control over land use.

OTHER PROBLEMS

Several other problems deserve mention here.

INTERSTATE USES OF WATER

The use of water of interstate streams is subject not only to conflicting interests of individual users, but to conflicts between the interests of the States themselves which in some cases involve conflicting theories of water law. Adjustments have been made on some streams by means of interstate compacts; in other cases controversies have been decided by the United States Supreme Court, which has adopted and consistently applied the principle of an equitable apportionment to each State of benefits from the use of the stream. If all of the States involved in a controversy recognize the appropriation doctrine, that doctrine is held to be the only equitable basis for determining the controversy but the riparian doctrine has been rejected as a basis for settlement of a controversy between States in which the appropriation doctrine was not in force. Where one State follows the appropriation doctrine and another the riparian, then the benefits must be apportioned to each State and rights within each State allocated in accordance with its own system of water law.

Problems have arisen in connection with the diversion of water within one State for use in an adjoining State. The right thus to transport water across a State line has been held by several State courts to be at the sufferance of the State in which the appropriation is initiated. Several States, by statute, have placed restrictions upon the right to appropriate water for use

outside the State, and one, Colorado, has forbidden such diversions entirely. In some States the right to make such appropriations is dependent upon the existence of reciprocal legislation on the part of the State into which it is proposed to transport the water for use.

Differences in the basic doctrines governing rights to the use of ground waters in adjoining States may conceivably cause serious trouble, should the interstate boundary line be found to divide an area of agricultural land overlying a common body of available ground water. If the appropriation doctrine governs the rights of use of such waters in both States, then the principles applied by the Supreme Court to interstate streams should be applicable, priority to govern regardless of location of the State line. If the appropriation doctrine applies in one State and the common-law rule of absolute ownership in the other, the principle of equitable apportionment between States will be more difficult to apply than in case of a surface stream, particularly if the ground water is under artesian pressure. Administration of the area will be more practicable if the waters of the entire ground-water basin are subject to rights of the same character.

OWNERSHIP OF RETURN WATERS

A portion of the water diverted from streams for consumptive uses is necessarily unconsumed and eventually finds its way back to the stream from which diverted or to some other stream. This is known as return water. The statutes are generally silent as to the ownership or appropriability of such waters, but the courts have passed variously upon the right of the original user to recapture them (1) before they have left his land, (2) en route from the irrigated land to a natural stream, and (3) after entrance into a natural watercourse. The problems involved are complex, but only in one State—Colorado—have they been comprehensively litigated. Elsewhere comparatively few phases, or none, have been passed upon, and administrative officers in some of the States are without adequate legislative or judicial guidance in handling the problems involved.

EXCHANGE AND ROTATION OF WATER

The statutes of several States authorize the owners of storage rights, whose lands are so situated that they cannot be irrigated from such reservoirs without pumping, to deliver the stored water to lands of others which can be reached by gravity from the reservoirs, in exchange for water to which the latter lands are entitled under direct-flow rights; this substitute supply to be diverted upstream for use on the lands of the reservoir owners. The exchange is administered by the water master in charge of the stream, and is so regulated that the rights of others are not injured. This system of exchange is widely practiced in an important agricultural area in northeastern Colorado and has contributed substantially to the more effective utilization of water there. Statutes of some other States authorize holders of rights in a common supply of water to rotate in the use of the supply, instead of dividing it into portions too small for efficient continuous use. This practice is particularly beneficial in times of scarcity of water.

DIVERSIONS OUT OF WATERSHEDS

The general rule is that water may be appropriated for use in a watershed other than that in which the point of diversion is located. There are statutory restrictions in some States, however, which are designed to protect existing rights in the original watershed, since diversion of water upstream for use outside the drainage area deprives the downstream lands of the benefits of return flow. And in one State the restrictive provisions have been so construed by the Supreme Court as to limit, as a practical matter, the location of canals to within the watershed of the stream which is the source of supply.

ABANDONMENT AND FORFEITURE OF WATER RIGHTS

Appropriative water rights may be lost through voluntary abandonment, which implies intent and may take place instantly, or through forfeiture for nonuse over a period of years prescribed by statute, regardless of intent. Some

statutes include procedure under which the question of forfeiture is determined.

It is a well-settled rule that the burden of proving an abandonment is upon the party who asserts it, for the courts have taken the position that abandonments and forfeitures are not favored and that they "will not lightly decree an abandonment of a property so valuable as that of water in an irrigated region." A question may be raised, however, as to whether the rule should not be reversed whether, in view of the ever-increasing public need for proper utilization of water, one who has ceased his use of water should not have the burden of proving that he has not abandoned the water right. Although most of the States have statutes providing for forfeiture for nonuse of water over a period of years, certain ones imply that forfeiture is dependent upon abandonment in fact, in which case the question of burden of proof becomes as important as in cases of abandonment not rising under the statute.

Soil Conservation Districts

THE ONLY way to combat erosion directly is to apply methods of treatment that will hold the soil. Widely needed conservation practices include the carrying on of engineering operations, such as the construction of terraces, terrace outlets, check dams, dykes, ditches, and the like; utilization of strip cropping, lister furrowing, contour cultivation, and contour furrowing; seeding and planting of waste, sloping, and abandoned or eroded lands to water-conserving and erosion-preventing plants; forestation and reforestation, rotation of crops, soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; and retirement from cultivation of steep, highly erodible areas and areas now badly eroded. From practices such as these, appropriate types of control for particular land may be chosen and molded into a plan that will give the operator the maximum production capacity consonant with preserving his capital.

SOIL CONSERVATION EFFORTS

For longer or shorter periods before the appearance of soil conservation districts, various agencies of the Federal Government had been administering the public lands under their jurisdiction with the conservation of these lands as a major objective. On private lands, Federal activity was primarily divided among three agencies. The Extension Service worked through the State Extension Services and the county agents, advising farmers on their conservation problems, setting up demonstration farms and carrying on educational work. The Agricultural Adjustment Administration provided benefit payments for farmers carrying out conservation practices. The Soil Conservation Service conducted research in erosion control and established and maintained demonstration projects in special problem areas where farmers could study the effect of applying control practices and learn how to apply them.

Various State governments had taken action with respect to either water or wind erosion. A number of States, particularly in the South, enacted legislation under which farmers or associations of farmers could obtain through the counties certain kinds of assistance, such as the use of terracing machinery. Following the dust-storms of the early 1930's, Texas provided for the formation of assessment districts to carry on soil-stabilizing operations; a number of such districts were formed and are now functioning in the Panhandle. Other States enacted wind-erosion or soil-drifting laws. Some of these laws included regulatory features, whereby public officials could step in and perform necessary erosion-control work if the landowner failed to do so, and charge the cost of the work against the land.

Likewise, various States in the Northern Great Plains, where the problem of overgrazing was acute, provided for the regulation of grazing through grazing associations. The instability of grazing operations in this region was due chiefly to the combination of absentee ownership and short-term grazing leases. The associations formed under the legislation of Montana and the Dakotas leased available range lands within

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their operating areas and then opened these lands to their members for grazing on a fee basis subject to conditions fixing the number of stock each member might graze and the seasons of use.

Thus a number of different aspects of the erosion problem were receiving attention before 1937 when the first State soil conservation districts laws were enacted. Yet neither the State nor the Federal programs were effectively combating the problem in its entirety. The Extension Service and the county agents could devote only part of their time and limited funds to educational work in the field of soil conservation; furthermore, the situation called for more than educational assistance. The agricultural adjustment program set in motion a Nation-wide effort to conserve resources, but did not at once bring about complete conservation, farm by farm; there were no intensive surveys determining prevailing conditions; no comprehensive area or watershed planning; very little of individual farm diagnosis and treatment. Furthermore, the program was wholly voluntary. Farmers operating lands located strategically at the heads of watersheds or valleys, or in the Dust Bowl area, could refuse to cooperate and thus continue to raise havoc with the conservation operations of their neighbors.

The program of the Soil Conservation Service, while sufficiently intensive, was limited geographically. The total area that could be treated each year under its demonstration projects was only a fraction of the acreage on which erosion was serious. The processes of soil erosion were proceeding more rapidly than those of erosion control; there was, and is, not time to rely upon the educational value of the demonstration projects to bring about the wholesale adoption of intensive control practices on private lands. Moreover, it was becoming increasingly clear that to achieve any permanent degree of success in an erosion control program, there must be power to establish control measures on key lands.

Again, while Federal and State agencies were needed to point the way toward better land use through technical advice and assistance, the initiative and actual work of conservation on a large part of the country's tillable and range land had to be undertaken by the land operators themselves. Individual efforts to control erosion, however, were likely to be ineffective; in some cases because of lack of the technical knowledge necessary to plan an adequate farm program; in others because of lack of the equipment to carry it out; in still others, because soil erosion is no respecter of fence lines, and one man's failure to protect his fields may nullify the efforts of his neighbors. It therefore appeared that a mechanism was needed whereby farmers or ranchers within a watershed or other natural land use area could organize for community action and mutual protection in combating soil erosion. For this, State legislation was required.

Accordingly, representatives of the various States met with men in the United States Department of Agriculture to discuss the form such legislation should take. It was agreed that such legislation should be formulated with the following considerations in mind:

(1) A genuine attack on the erosion problem requires more than the construction of terraces and dams. Land use practices and cropping programs must be adjusted in many cases.

(2) Practically all the lands in particular watersheds must be brought under uniform control. Arbitrary boundary lines should be ignored and programs formulated over naturally bounded areas.

(3) A program can be made effective only if farmers can be induced to cooperate voluntarily. Therefore machinery should be set up which farmers can use when they are convinced that action is desirable. Some machinery should, however, be provided whereby a majority of the farmers can vote conservation ordinances upon themselves and thereafter compel a recalcitrant minority to comply where it is for the public good.

(4) The farmers must be able to feel that the program is largely in their own hands. The only way to bring about this feeling is to leave the program largely in their hands.

(5) Because of the wide variance in conditions within a single State, conservation ordinances must be formulated locally and must be flexible.

(6) Where the results of land treatment increase the public welfare and social good the costs of the operation should not be thrown wholly upon the land owners operations.

There emerged from this discussion a standard statute, called the Standard State Soil Conservation Districts Law, whose major provisions contain the principles outlined above. It provides for the establishment of local governmental units, called soil conservation districts, on

watershed or otherwise desirable area basis. These districts are organized by a State Soil Conservation Committee, composed of State agricultural leaders. The standard act does not permit a district to be established, however, until (1) at least 25 farmers have petitioned for its organization; (2) hearings have been held on the question of organization and the proper area to be included in the district; (3) the State committee has determined that there is a need for a district to operate in the area, and that operation of the district would be practicable and feasible; and (4) a majority of the farmers in the area has voted in favor of creating the district.

The standard act provides that each district shall have a governing body of five supervisors, consisting of two qualified men appointed by the State committee, and three members elected by the farmers from their own number. The supervisors have the power to carry on all kinds of erosion-control projects and demonstrations; cooperate with other public agencies, Federal, State, and local, and receive assistance from them; and assist farmers in planning and carrying out conservation operations on their lands. The district is financed with State appropriations supplemented by assistance from other public agencies and the farmers themselves.

The supervisors have a second set of powers—the authority to enact conservation ordinances to regulate farming and range practices to the extent necessary to prevent erosion that would harm other lands. But the ordinances cannot be enacted into law unless they have been approved by a majority of the farmers and ranchers voting in a referendum held for that purpose. They can be abrogated if a majority wishes them repealed. Further, if in an individual case they cause unnecessary hardship, a board of adjustment can be petitioned for relief from strict compliance, and an appeal can be taken from that board to the courts.

This power to enact conservation ordinances permits farmers and ranchers, when they are convinced of the desirability of taking such action, to vote ordinances upon themselves in their own interest, and to meet the problems raised by the few who might refuse to cooperate in the programs of the district—absentee landowners or others who for one reason or another might take no interest in controlling erosion on their lands, whether or not their neighbors suffered on that account.

A procedure is also set up under which farmers and ranchers can dissolve a district if they wish. In brief, the standard act provides administrative machinery which farmers and ranchers can use or not use, as they see fit, to help solve their erosion problems.

This Standard State Soil Conservation Districts Law was published early in 1936. By the fall of 1937, 22 States had passed soil conservation districts laws following the same general pattern. In the following year—an off year for State legislative sessions—4 more States joined their ranks. In 1939, 10 more States passed districts laws, and 2 additional States joined in 1940, to make a total of 38.[5]

Under these enabling acts, 409 districts have been organized, as of November 15, 1940, covering a total area of over 263,000,000 acres. Most of these districts are now actively functioning. With the cooperation of various public agencies, they are studying their erosion problems and developing district programs and work plans. They are helping individual farmers in developing farm conservation plans and carrying out erosion-control practices, such as terracing, contour furrowing, gully checking, fence realignment, water spreading, and revegetation, where the farmer needs assistance because of lack of funds or experience. They are cooperating with State and local highway agencies in controlling erosion on and along highways, and with other public agencies owning land within their boundaries in establishing a coordinated attack on their common problems.

In a few of the districts, conservation ordinances have already been adopted. In the Cedar Soil Conservation District of North Dakota, the supervisors have enacted an ordi-

[5] Alabama, Arkansas, California, Colorado, Florida, Georgia, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Michigan, Minnesota, Mississippi, Montana, Nebraska, Nevada, New Jersey, New Mexico, New York, North Carolina, North Dakota, Oklahoma, Oregon, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, and Wisconsin.

nance designed to prohibit the grazing of livestock in excess of the carrying capacity of the lands in the district. It is becoming apparent that range problems may be adequately met through soil conservation districts. Districts may adopt ordinances prohibiting grazing in excess of carrying capacity, for example, and requiring everyone grazing livestock within its boundaries to secure a permit, certifying the number and kind of stock to be grazed and their grazing season. Districts can also lease range lands to control their use for the purpose of conserving soil and forage resources, apportion the use of the lands among livestock owners, and charge fees for the use of the lands, which may be used to pay costs incurred in leasing the land or in operating the district. Grazing associations have found the lease of grazing land and the control of their use in this manner an effective way of halting a primary cause of erosion—overgrazing. Leasing activities by more soil conservation districts in range areas can be expected.

Following the widespread adoption of soil conservation districts legislation, various Federal and State agencies have reorganized their approach to the erosion problem. The resources available to the Soil Conservation Service, for example, are now primarily used in assisting districts, although the Service still conducts erosion control studies in various experimental stations and maintains numerous demonstration projects.

As of December 2, 1940, the Department had entered into memoranda of understanding with 294 districts. Under the terms of these memoranda and supplemental memoranda of understanding entered into directly by the Soil Conservation Service with those districts, the Service makes available the services of conservationists and other technicians, together with clerical help and office equipment. The technicians help the supervisors to formulate a district program and work plan, outlining objectives and procedures to be used in carrying out an effective conservation program throughout the area. They assist in making necessary surveys, in preparing individual farm conservation plans and obtaining cooperative agreements with farmers and ranchers; in performing preliminary operations, such as the laying of terrace lines, to the extent that the necessary technical skill is not possessed by individuals; in checking performance by farmers and ranchers; and in disseminating conservation information among them.

The Service is also furnishing, where necessary and available, field equipment, such as tractors and graders, and planting materials. The Service has a large number of CCC camps under its supervision, and is able to furnish CCC labor, together with facilitating equipment and materials, to many of the districts.

The Farm Security Administration is assisting some districts to finance necessary operations upon the lands of needy farmers. The Forest Service is cooperating with districts in the Great Plains in the administration of farm shelter belts. The Agricultural Adjustment Administration is adjusting its programs to fit the needs and activities of the districts. The Extension Service of the Department of Agriculture and the cooperating State Extension Services are performing educational work indispensable to the effective operation of the districts in all of the 38 States. The flood control work of the Department on watersheds, consisting of coordinated measures for water run-off retardation, will in many instances, because of the close relationship between erosion-control and flood-control measures on the land, be carried on through close cooperation with districts.

The Work Projects Administration, pursuant to statutory authority recently granted it, has established many district-sponsored soil conservation projects. State departments of vocational education in many States have made the services of their teachers of vocational agriculture available to further district programs. Other State and local agencies are also extending assistance to districts in various ways. Soil conservation districts are assuming a definite place in the American rural pattern.

Variations in State Legislation

While the soil conservation districts laws passed by the 38 States follow the general outlines of the standard act, they nevertheless contain many modifications. In some States con-

stitutional or other legal requirements peculiar to the particular State enacting the legislation have caused the inclusion of certain special provisions. The laws afford a considerable number of variations in procedures for the organization of districts and the enactment of conservation ordinances.

PROVISION FOR CONSERVATION ORDINANCES

Three of the States make no provision for conservation ordinances. Three others provide a procedure for passing ordinances but fail to provide any method of enforcing them.

Under most State laws, a favorable vote of a majority, or at most two-thirds, of the persons voting is a sufficient number to permit the district supervisors to adopt a conservation ordinance. Nine States have raised the requirements for a favorable vote from 75 to 90 percent. In several States, these higher requirements are paralleled by similarly high requirements as to the acreage represented by those farmers and ranchers who vote favorably.

It is questionable whether sentiment approaching unanimity is necessary particularly when everyone has a right to petition a board of adjustment for a variance where strict compliance with an ordinance would work hardship on him and when he has a constitutional right of recourse to the courts if ordinances are unreasonable in their general application.

BOARDS OF ADJUSTMENT

A number of States that provide for the adoption and enforcement of conservation ordinances have made no provision for boards of adjustment to which individual farmers can appeal for relief when general conservation ordinances work particular hardships. In the case of a few States the omission was prompted by unfavorable court decisions. In others, no legal barrier was present.

Provision for boards of adjustment affords a farmer or rancher in a soil conservation district a right of recourse to a public body, different from the body that enacted the ordinance, if he believes that an exception should be made for his land. He can present his case for relief from strict compliance with the ordinance to this body and if dissatisfied with its decision he can appeal to the courts. A safeguard is thus provided, not so much against arbitrary action by district supervisors as against circumstances which can hardly be foreseen and guarded against at the time of the drafting of the ordinance. In the analogous field of city zoning, boards of adjustment have been found highly beneficial.

CONTROL OF SOIL CONSERVATION DISTRICTS

In most State soil conservation districts laws, farmers and ranchers are the persons in charge of district affairs. They must approve the organization of the district and its dissolution; they must approve the adoption of conservation ordinances; they elect a majority of the board of supervisors which governs the district. To provide them with competent advice, two of the supervisors are generally chosen by the State committee. Further, the State committee is usually authorized and directed to assist the districts and coordinate their activities insofar as possible through advice and consultation, a service that is particularly important during the formative period. Nevertheless, nearly all laws avoid giving either the State committee or any other agency any degree of control over the programs to be formulated or the methods employed in carrying them out. The responsibility for the program is thus placed on the shoulders of those who will receive its benefit and who will share its burdens.

A few States, however, vest some degree of control over the districts in the State committees. In some States, the committees select all the district supervisors. In at least four States the employment of technicians and other employees by the district supervisors is subject to the approval of the State committee; and a few statutes provide that before district programs can become effective they must meet with the approval of the State committee.

In the few cases the State committee is required to approve proposed conservation ordinances before they can be adopted, it is doubtful whether the provisions of these laws are constitutional. The power to disapprove is a veto power under which the State committees may in effect declare what ordinances shall be

adopted in the respective districts. Since the laws set up no specific standards that must be followed in approving or disapproving the ordinances, and since the committees are clearly only administrative agencies of the State (whereas the districts are local units of government that may constitutionally be authorized to exercise local legislative power), the objection may be made that the authority given the committee is an unconstitutional delegation of legislative power to an administrative board.

PARTICIPATION IN DISTRICT AFFAIRS

Many of the State laws provide for participation in all district affairs by all the land occupiers —tenants as well as owners; a maximum number of persons is thereby given a voice in the operation and management of a district. In other State laws it has been commonly provided that only landowners may petition for the creation or discontinuance of a district, vote in the advisory referenda on creation of the district and on adoption of conservation ordinances, and elect district supervisors. In a few States, only landowners are permitted to participate in some district affairs, while all occupiers (including owners) are permitted to participate in others.

In most of the States where control over district affairs is given to landowners, the districts are empowered to cooperate with and give assistance to all land occupiers, and to enforce conservation ordinances against them. But in several States, the districts are given express authority only to cooperate with landowners and enforce ordinances against them. In order to cooperate with tenants and renters in these States a district must work through the landlord, though it is doubtful whether ordinances enforceable only against "landowners" can be enforced either against a tenant or against his landlord where the landlord has no right to regulate his tenant's farming operations.

COOPERATION OF PUBLIC AGENCIES

Most State laws require counties and State agencies having jurisdiction over public lands within a district to cooperate with the district in carrying out its program, and to comply with the provisions of conservation ordinances adopted by the district. In at least five States no such provision is made. In several others, the agencies controlling the land are directed to cooperate with the districts, but the ordinances are not made applicable to the agencies. In still others, the agencies may, but are not required to, cooperate with the districts, and they are not required to observe the provisions of conservation ordinances. In practice, most agencies controlling State or county lands in a district will cooperate, but where they lack statutory authority a situation may arise where a district's program cannot be effectuated because of failure to control erosion on public lands.

ALLOCATION OF APPROPRIATIONS

Few State statutes provide a procedure for the allocation of State funds appropriated for the administrative or other expenses of soil conservation districts. This function could be performed by the State committee, since in many States appropriations going directly to the districts would be prohibited as special legislation. Even if appropriations could be made directly, that procedure would not provide for districts organized between sessions of the legislature.

In any procedure which is established for an allocation of funds by the State committee, adequate standards should be set up to guide the State committee. In the absence of sufficient standards, appropriations might be held invalid on the ground of improper delegation of legislative power to the committee.

ORGANIZATION BY COUNTIES

In a few of the States, soil conservation districts, although they have their separate governing bodies and otherwise function autonomously, are organized by county boards of supervisors rather than by State soil conservation committees. Because of the highly specialized nature of erosion-control work and the complexity of its problems, it may be questionable whether county officials, busy with their previously designated duties, can function as adequately in determining the need for districts, their proper boundaries, and the feasibility of their

operation, as can a committee set up with soil conservation solely in view.

In two States the boundaries of a soil conservation district are automatically made coextensive with those of the county once the county officials have determined to create the district. It seems doubtful whether county lines, which have been laid out with no reference to land use requirements, will provide a desirable basis for soil conservation efforts in all cases. Some districts organized on a county basis may be seriously impeded in carrying out their programs because lands on ridges or at the heads of watersheds—lands most in need of treatment to protect lower lands—may lie in other counties.

CONSTITUTIONAL REQUIREMENTS

Experience to date under the soil conservation districts acts now in force indicates that legislative revisions may be necessary in some instances because of constitutional requirements. Thus, in a few States where the statutes grant the right to vote in elections of district supervisors to landowners or occupiers, court decisions have cast some doubt on the legality of so limiting the right to vote. It may be necessary to extend that right to all persons qualified to vote in State elections generally. In another State, a peculiar constitutional provision may conceivably be held to require that even in the advisory referenda on creation of districts and adoption of conservation ordinances, all qualified electors should be permitted to vote.

In one State, the definition of "landowner" is such that conservation ordinances may be held enforceable only against landowners who are qualified voters—thus exempting corporations owning land as well as persons not qualified to vote, and raising a constitutional question of discrimination. The question of discrimination is also raised by a provision in another State which excludes persons whose land has been terraced at public expense from voting in referenda on creation and discontinuance of districts. In still another State, it is at least arguable that tenants of nonresident owners are subject to conservation ordinances while other tenants are not.

MISCELLANEOUS PROVISIONS

In a few States there is some doubt as to the legal status intended to be given soil conservation districts. Under nearly all the State laws, districts are governmental subdivisions of the State, and as such may be given local legislative power. In one State, however, they are expressly declared to be administrative agencies of the State, and because of this fact their power to adopt conservation ordinances is dependent upon the legal sufficiency of standards set up by the legislature to guide them; and in several other States, where districts have no power to enact and enforce conservation ordinances, the laws do not declare the districts to be public bodies corporate and politic.

The lack of a procedure for consolidating existing districts and the lack of authority for a district to change its name have been felt in several instances. In several States it has been found desirable to have area representation on the board of supervisors for each district, rather than having all members of the board elected at large. One State has already amended its law to provide area representation in order to insure both ranchers and farmers of representation.

Miscellaneous restrictions have been included in several of the statutes. Several States require a favorable vote of at least 75 percent in the referenda on district organization, and several others require that those voting favorably own a high percentage of the land within the proposed district. In one State, structures cannot be built without the consent of two-thirds of the landowners affected. In another, railroad rights-of-way are automatically excluded from a district. In Texas, districts cannot exceed 3,000 square miles in area. In a few States, provisions have been added which are intended to give farmers additional protection against unreasonable conservation ordinances. An accumulation of experience in working with these laws will doubtless afford a basis for determining

the advantages and disadvantages of these restrictions.

The Development of Administrative Practices

The districts program presents certain unique problems of administration, both to Federal agencies cooperating with districts and to the district supervisors. Because of the extent to which the program seeks to achieve decentralization, much of its effectiveness depends on the attitude and working philosophy of a great many people—farmers, district supervisors, members of the State soil conservation committees, administrative and technical personnel of the Soil Conservation Service and other cooperating agencies. Because of the newness of the basic statutes and the novelty of the administrative procedures that are being developed to give effect to cooperative activities, the numerous people working within soil conservation districts find that it takes time to understand their objectives, their pattern of organization, their procedures, and their underlying considerations.

The very size of the program and the speed with which it has developed have resulted in some misconceptions as to its nature and goals. A fundamental premise in the districts approach is that the districts must be independent, autonomous units of government, through which farmers and ranchers may determine their own policies and programs. It is highly important, therefore, to establish a clear-cut line of demarcation between the functions of cooperating agencies in assisting the districts and the functions of the districts themselves.

Facilities for State Soil Conservation Committees

The State soil conservation committees in a majority of the States have little or no resources for adequately carrying out their functions. The committee members, however, generally hold other public offices relating to agriculture, which to some extent makes it possible for them to travel and carry on their work as committee members.

Most States have found that State soil conservation committees, fully to carry out the powers and duties imposed upon them by law, ought to have the following four general types of facilities:

(1) *Office space, supplies, secretarial and clerical help, travel, and if possible, an executive secretary.*

(2) *Technical assistance.* Most State committees have the important responsibility of determining, in the last analysis, whether districts should be organized, and, if so, what territory should be included for most effective operation. These determinations include specific consideration of topography, soils, extent and kind of erosion, land use practices, and other related physical, economic, and geographic factors. If technical assistance were available for an independent investigation of these matters, the committee would not be required to depend exclusively on evidence presented at hearings and such data as they can procure through public agencies and other sources, information that is sometimes limited in scope.

(3) *Legal assistance.* The use of legally sound procedure in organizing districts is essential to a State's district program. If the services of capable attorneys preferably, the State legal officers are available, this can be assured.

(4) *Information concerning district programs and activities within the State, and in other States.*—Information of this kind is of great help in coordinating and otherwise facilitating the operations of the various districts. Because of the newness of the program, no definite functional pattern has yet been established for district operations. The more or less experimental approaches taken in each district will probably, where coordinating facilities are at hand, eventually merge into proven and fairly uniform approaches and procedures.

Assistance to Soil Conservation Districts

Except in two States, soil conservation districts have no power to tax or to borrow money. Farmers in several districts have carried out many practices through cooperatively using their own equipment and labor, and in a few districts the supervisors have been able to sublease lands

and take other advantage of local situations to raise funds for administrative and operating expenses. Most districts, however, are still entirely dependent upon outside sources for technical aid, facilities, equipment, labor, or materials necessary to effectuate their programs.

Further, many farmers need more than mere technical assistance in carrying out comprehensive conservation operations on their farms. They need trees, seed, labor, heavy machinery; in some cases they may have to obtain grants or loans. The more acute the erosion problem is in an area, the more likely it is that the farmers will lack the resources to combat it successfully.

There are possibilities, of course, that other sources of cooperative assistance have not yet been tapped, or utilized to the utmost. The Extension Services may be able, for example, to intensify their educational activities. The county land use planning program will, in the course of its development, greatly facilitate the job of district planning, just as the district action program will facilitate the realization of the land use planning committees' recommendations. The Farm Security Administration, in requiring adequate conservation and farm management plans as a condition to assisting farmers, can do much to effectuate district action programs, and so can other agricultural credit agencies. Cities, counties, irrigation and drainage districts, water and power companies, and other public or private agencies that will benefit from district operations may be induced to make funds or assistance available. But merely because outside sources of assistance are available, soil conservation districts should not overlook the things that they can accomplish by their own effort.

Farm-Tenancy Law

THE LEGAL arrangement by which the farmer holds his land is one of the major factors in determining how he will use it. From colonial times, ownership of the soil by the family who tills it has been a goal of American democracy. But this ideal has been decreasingly a fact. At present, approximately 42 percent of our farmers are full tenants and another 10 percent rent part of the land they operate. Since tenancy in some form now affects one out of two American farmers and since for at least 75 years its importance as a means of land holding has been on the increase, a realistic policy for soil resources must give major consideration to the effect of tenancy on land use.

Few, if any, of the other land use situations considered in this report exhibit more clearly than tenancy the interlocking nature of land use problems. The results of farm operations under a tenancy agreement are intertwined with several groups of economic and social conditions. The areas of high tenancy are the areas of cash-crop farming. Prices for farm products and conditions of agricultural credit, therefore, affect tenancy through cash income, land valuation, rent levels, rates of foreclosures, and tax sales. They also guide the use to which the tenant puts his farm. Social conditions likewise affect tenancy. In various areas, legislation establishing public health services, providing for grants-in-aid to education, or inaugurating rural public housing programs, may be in fact, if not in name, a direct means of improving the tenant status. Unfavorable economic and social factors induce exploitation of the soil and thereby destroy the base on which any system of land tenure can operate adequately, the base whose maintenance is to the long-run interest of landlord and tenant alike.

The economic and social factors affecting farm tenancy have been set forth at length in the Report of the President's Committee on Farm Tenancy issued in 1937, and have been the object of intensive study by various agricultural and liberal arts colleges, private foundations and individuals. There is no need to restate their findings here. The effects upon tenancy of the various national agricultural programs, the AAA, the SCS, and the FSA, etc., have likewise been analyzed.

Statistics indicating the seriousness of the tenancy problem are readily available and need not be repeated here. It must be borne in mind moreover that the national statistics do not present a complete picture and must be interpreted with regard to conditions which vary from region to region and from State to State. Under some circumstances a tenant may be a poor farmer with little education and little capital; under others, he may be one of the most substantial farmers in the community with an

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investment in equipment and livestock comparable to his landlord's investment in land.

The purpose of this chapter is to discuss the legal basis of tenancy, and the suggestions for improvements recently made and in a number of cases acted upon in the several States. In the past, public conviction that ownership is the desirable legal status toward which farm operations should be moving has tended to confine interest in landlord-tenant law to practicing lawyers concerned with its application to particular cases rather than with the strengths and weaknesses of its provisions in the aggregate. But the last few years have seen increasing recognition that home-ownership and tenancy-improvement programs are complementary methods of reaching agricultural well-being. At the same time that action to encourage farm home ownership has been taken by the Federal program of loans to low-income farmers for purchase of farms under the Bankhead-Jones Farm Tenant Act and by various State programs for settling farmers on State-owned lands or reducing tax burdens through homestead exemptions, attention has been turned to the situation of the large group of farmers who at any given time have tenant status.

State Studies of Tenancy

In a number of widely separated States, inventories of the tenancy situation have recently been made, or are now in process. Some of these studies have been followed by recommendations for legislative action, and State legislatures have begun to put commissions' findings into law.

Iowa's Tenancy Commission gave particular emphasis to landlord-tenant law. Among its recommendations were: (1) The automatic continuation from year to year of all agricultural leases until notice for termination is served by either party not later than 6 months before the expiration date of the lease; (2) compensation for disturbance to the other party in case either landlord or tenant seeks to terminate the lease less than 6 months before the expiration date; (3) establishment of the right of an outgoing tenant to a reasonable compensation, within certain limits, for the unexhausted value of improvements he has made on the farm; (4) reasonable compensation to the landlord for damage to his property as a result of the tenant's mismanagement or neglect; (5) all differences regarding matters of fact arising between landlord and tenant be submitted to arbitration, upon the request of either party, before the case can be carried to court; and (6) the decision of the arbitrator be final and binding upon both parties if the sum involved does not exceed a certain amount, except in cases of question of law.

The Iowa legislature seriously studied the several recommendations of this commission and the proposal that a 4-month notice must be given to terminate all farm leases was enacted into law in 1939.

A similar commission in Arkansas has been concerned with several types of laws for the improvement of the tenant's situation. The last legislature enacted a land policy bill recommended by the Commission making State lands available for ownership by landless people. This law is working to the definite benefit of the farmers of the State. The last legislature also considered the matter of improving the handling of the problem of tax delinquency as recommended by the Commission. Although this matter was not acted upon by the legislature, considerable progress was made in clarifying the situation. The Commission has also given consideration to adjustments in the landlord and tenant law of the State.

A recent Kentucky statute instructed the Governor to appoint a commission to study the tenancy problem and make recommendations before the next General Assembly meets. The legislature in South Carolina has requested the Extension Service of that State to study the tenancy problem and to present recommendations before its next meeting.

Along with this development, students of the problem are placing in the hands of interested individuals and agencies information regarding present law and suggested procedures for effecting adjustments. The Missouri Agricultural Experiment Station, a little more than 2 years ago, published a bulletin explaining how the recommendations of the President's Committee

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would fit into the present landlord-tenant law and tenancy system of that State. The Illinois, Iowa, and Oklahoma Agricultural Experiment Stations have published comprehensive studies of present tenancy law in their respective States and outlined possible remedial procedures. Similar studies are in various stages of completion in Arkansas, Kansas, Kentucky, and Virginia. Other States are planning studies of the same subject. Valuable studies on tenancy law in Washington and Oregon have been published by the Northwest Regional Council. Technical and legal aspects of the subject are discussed in the Farm Tenancy issue of Law and Contemporary Problems, published by the Duke University School of Law in October 1937.

Incentives to Stable Tenure

It is a matter of common observation, verified by scientific investigations, that the tenant-operated farms of the country are deteriorating more rapidly than the owner-operated farms and that the problem of soil erosion is more serious on farms which have been under tenant operation for a long period of time than on farms which have had continuous owner operation. Owner operators faced with economic problems similar to those faced by tenants, however, often find themselves unable to adopt the conservation practices which they would prefer. The owner operator who fears foreclosure has an instability of tenure similar to that of the tenant under the usual lease. The owner operator who must pay too high a proportion of his income to meet the payments on his farm is in a similar position to the tenant who must pay too high a proportion of the farm income for rent. Nevertheless, there is a startling contrast between the way in which owner operators maintain their farms under normal circumstances and the manner in which tenant operators of equal ability and knowledge are able to maintain theirs.

The tenant who does not feel that he will remain upon the farm long enough to reap the benefits of soil-maintenance work will not engage in such work. A major factor affecting conservation is instability and insecurity of tenant operators; in addition to those farmers who do not follow conservation practices because they are going to move, are many farmers who do not do things that they know should be done because they do not know whether they are going to move or not. It is a matter of common observation that tenant farmers, when they have surplus money, tend to buy things such as automobiles which they can take with them, rather than make improvements on the farm and in the farm home which they must leave behind.

Legislative measures recently enacted, and current suggestions for changes in farm-tenant law, are designed to encourage conservational farming by tenants. In doing so, they protect the interest of American society in its basic land resources. They emphasize the long-term community of interest between landlord and tenant. And they serve the interest of America's tenant families in planning ahead and gradually accumulating working capital on the farm.

The farm-tenancy law of the United States is a combination of common law, court decisions, constitutional provisions, and legislative enactment. The common law now in force came to this country with the colonists from England; in its country of origin it has been abandoned, over the last 50 years, in favor of a legislative program that culminated in the Agricultural Holdings Act of 1923. When common law was introduced into this country, tenancy was far less prevalent than it is today, and the social presumption was that operation would be by owners rather than tenants.

The basic assumption of the law of tenancy is freedom of contract between landlord and tenant and a fair equality in bargaining power. The law functions to supply devices for the enforcement of contracts, such as the collection of rents and the regaining of possession by landlords at the close of a lease, to require written evidence for the enforcement of agreements of long duration; to regulate the manner of termination of agreements when no method is supplied in the contract; and to enforce presumptions based on the customs of the community in cases of agreements that are incomplete or unclear.

Today, the extent of farm tenancy and the seriousness of soil erosion are great enough to warrant a social interest in the contract between

landlord and tenant and bring it within the class of contracts which the State may regulate in considerable detail. There is a consequent growing movement for a reexamination of the operation of farm leases and a consideration of desirable regulatory measures.

LONGER TERM LEASES

Under present law, landlords and tenants are free to adopt virtually any lease arrangement, written or unwritten; progress toward a type of lease that will stabilize tenant farming is not dependent upon legislative action. But a number of legislatures have encouraged the development of improved leases by appointing State commissions to study this phase of the tenancy problem along with others, and by encouraging research on the subject by State agencies, such as agricultural experiment stations and State colleges of agriculture, many of which already possess the necessary statutory authority.

Improved leasing provisions are a feature of a number of State land use programs for publicly owned lands. Leasing practices thus tried out on a voluntary basis may prove to be so desirable that the legislature may properly consider their compulsory extension.

Since the present prevalence of short-term leases is one of the main causes of soil exploitation, considerable thought has been given to the development of legal forms encouraging tenancies of longer duration. The most commonly suggested devices are (1) long-term leases, (2) long-term cancelable leases, (3) automatically renewable leases, and (4) compensation for disturbance.

The long-term lease is the most obvious solution for the problem of insecurity and instability. If, after a trial period of 1 or 2 years, satisfactory tenants were able to get a long-term lease, the problem of instability and insecurity could be met in many individual cases. Under existing law, such leases would have to be in writing. In some States, leases are limited by statute or by the State constitution to 10 years or some similar period. These provisions limiting the length of leases and prohibiting those regarded as too long, and the decisions upholding them, indicate a power in the States to regulate the length of agricultural leases. But up to the present time, no State has taken steps to prohibit or discourage agricultural leases running for only 1 year.

Under present conditions, many landlords and tenants object to entering into a long-term lease because the parties frequently do not know for how long they will desire the relationship to continue. This problem is aggravated where large blocks of land are in the hands of financial institutions which desire a tenant only until they have an opportunity to sell the land. To cover these cases, the suggestion has been made that long-term cancelable leases might be used, containing provisions that, upon the happening of certain events or upon sufficient notice by either party, the lease might be canceled.

Automatic renewal of all farm leases in the absence of specific notice for termination, given by either party a reasonable length of time prior to the end of the year, has likewise been proposed. In Iowa, a 1939 statute provides that every lease shall be automatically renewed unless notice of termination is given 4 months prior to the end of the crop year. When landlords think they may have an opportunity to sell their land during the 4-month period, they may give termination notices to their tenants while actually not intending that termination should take place in any but a few instances, but when continued ownership is intended, operation of the provision gives the tenant assurance that he can remain in time for him to plant winter cover crops and do fall work.

An additional suggestion for encouraging long-term tenure is adoption of the principle of compensation for disturbance as exemplified in the English Agricultural Holdings Act of 1923. The amount of compensation under this act is not limited to the actual expenses of the tenant in moving and finding a new farm, but has been set at 1 year's rent, with the additional right of the tenant to prove greater damages, not to exceed 2-year's rent. There can be no question that this affords an effective deterrent to arbitrary and unnecessary ending of leases, but it is probably too great a departure from present practices to be currently made part of American

law unless the specified reasons for termination were very broad.

TENANT'S RIGHT TO REMOVABLE STRUCTURES

Cash crops that deplete the soil rather than the extensive practices associated with livestock are characteristic of tenant-operated farms. Although the amount of livestock on tenant farms varies considerably from region to region, it is generally true that tenants do not have as much livestock as owner operators and that in many areas, especially in the South, recent increases have been primarily on farms of owner operators. In part, the failure of tenants to participate in increased livestock production is the result of insufficient capital; in part, it is due to the fact that the production of livestock requires planning over a longer period of time than 1 year. Considerable experimentation has been done with new types of leasing arrangements designed to meet these problems and to give the landlord a return on land devoted to livestock production; considerable progress towards the solution of the problem can be made through such voluntary arrangements.

Livestock production, however, may demand additional buildings and fencing. Where expensive permanent buildings are required, the investment must in most cases be made primarily by the landlord—the existing legal system is adequate to cover improvements of this type. But where only temporary removable structures are necessary to enable the tenant to engage in increased livestock production, a different problem is presented. In many States, the tenant's legal right to remove certain physically removable structures is in doubt because of an historical distinction in law between agricultural fixtures and similar fixtures (known as trade fixtures) put up by tenants in other businesses. In some States there are decisions holding that such things as temporary hogpens, watering tanks, hay carriers in barns, and temporary fences cannot be removed by the tenant, even though they could be removed without physical damage to the property. Yet in other States there are decisions which permit tenants to remove such things as the complete equipment necessary for the operation of a dairy farm and houses erected for the occupancy of subtenants and sharecroppers.

In those States where the tenant's right to remove structures is doubtful, tenants are naturally reluctant to construct them even though they have the necessary capital and their farming operations would be greatly facilitated if they had them. The Oklahoma Supreme Court, in the course of a decision enforcing the rule, has suggested the desirability of its repeal—it should be noted that the rule is not applied in Oklahoma where the State is the landlord but only in the case of privately owned lands. The State of North Dakota, while retaining the rule generally, has met a pressing problem of inadequate storage facilities for grain on tenant-operated farms by permitting tenants to erect and remove necessary granaries. The United States Supreme Court has described the common law rule which prohibits their removal in the following terms:

> The general rule of common law certainly is, that whatever is once annexed to the freehold becomes part of it, and cannot afterwards be removed, except by him who is entitled to the inheritance. The court suggests, however, that "The common law of England is not to be taken in all respects to be that of America. Our ancestors brought with them their general principles, and claimed it as their birthright; but they brought with them and adopted only that portion which was applicable to their situation." In this connection, the court further explained that "The country was a wilderness, and the universal policy was to promote its cultivation and improvement. The owner of the soil as well as the public, had every motive to encourage the tenant to devote himself to agriculture, and to favor any erections which should aid this result; yet, in the comparative poverty of the country, what tenant could afford to erect fixtures of such expense or value, if he was to lose his whole interest therein by the very act of erection?" *Van Ness v. Pacard*, 2 Pet. (27 U. S.) 137 (1829).

COMPENSATION FOR IMPROVEMENTS

Unlike the removable structures just discussed, soil improvements, permanent fencing, water systems, and internal improvements in farm homes, because of their very nature, cannot be removed when the tenant goes. American law has made little attempt to meet this problem. It has apparently been felt that, since the tenant is under no obligation to improve the property, he may decline to do so in the absence of an

agreement with his landlord covering satisfactory terms under which the improvements will be made. As a result, tenants, in general, have not made improvements, and deterioration of tenant-operated farms has followed.

In the field of soil conservation various means of arresting this deterioration under State regulatory legislation have been proposed. Three main methods have been suggested: (1) Requiring that the improvements be made at the expense of the landlord; (2) providing for the adjustment of rental rates so that the tenant will have funds available and the burden will be equitably borne; and (3) providing for compensation to the tenant for his share in soil conservation work in case he does not remain on the farm long enough to obtain full benefits from it.

Kansas and Louisiana have recently enacted legislation providing compensation for improvements. Longer experience is available under the English Agricultural Holdings Act of 1923, which requires that if a tenant makes certain named improvements and leaves the farm before the value of such improvements is exhausted, the landlord must compensate him for their unexhausted value. (The act also provides compensation for certain improvements made after notice to the landlord and for others with the consent of the landlord, but in such cases, where the landlord consents, a contract can be made and legislation serves merely to buttress a voluntary agreement.)

There appears to be special justification for legislation providing compensation to tenants for their expenses and labor in the case of a limited class of soil improvements and erosion-control devices, which, in the public interest, should be widely adopted and which, because of their nature, must be done by the tenant as part of his farming operations. To prevent abuses, legislation of this type should be carefully drafted to include only necessary conservation improvements adapted to the farming area, especially in its early stages, such a measure might be limited to improvements made in connection with publicly sponsored soil conservation programs.

As an equitable balance to compensation of the tenant by the landlord for improvements on the farm, compensation of the landlord by the tenant has been proposed in cases where the tenant fails to maintain the farm. The provisions of the English act relating to compensation for deterioration are of considerable interest in this connection. Under these provisions the landlord may make a claim against the tenant for deterioration in the farm caused by undesirable farming practices. Somewhat higher standards for farm maintenance than now generally exist might be set in connection with a system which offered rewards for good farm maintenance; claims for deterioration which under the present system might prove uncollectible could be collected as an offset to claims for compensation.

If a system which adopted the principles of compensation for improvements and compensation for deterioration were to be inaugurated in any State, careful consideration should be given in drafting the statute to means of calculating the amounts which might be due on the termination of a lease. While these amounts could be made subject to determination by arbitration, it would appear desirable to provide standards to reduce to a minimum the number of instances when it would be necessary to call in arbitrators at the termination of a lease.

ADEQUATE NOTICE FOR TERMINATION OF LEASES

Winter cover crops play an important part in soil conservation; indeed, much work contributing to better land use is fall work. Under the present system of leases many tenant farmers do not plant winter cover crops and do neglect fall work of this nature because they do not know whether they are going to move. If the annual leasing system is retained and an effort to encourage better land use is made at the same time, it will be necessary for tenant farmers to know whether or not they are to remain upon their farms for another year at a considerably earlier date than is now customary.

Many landlords delay entering into new leases because of the hope of selling their farms. To this class of landlords a moving up of the date for entering into new contracts might prove a real inconvenience. Most landlords, however, who hold their farms as a more or less permanent

investment could, without inconvenience, make their determination as to whether or not to retain their tenant at an early date. Most landlords now make their agreements at an earlier date than they are legally required to do.

The time of notice which must be given to terminate a farm lease varies from State to State and with the type of lease used. Moreover, most leases are now for a definite period of 1 year, in which case no notice of termination is legally necessary to terminate leases. (The common-law rule that 6-months' notice is necessary to terminate a year-to-year lease survives in very few States. The need for flexibility and short-notice periods in the leasing of urban dwellings, has led to the passage of statutes with general terms applicable to farms as well.) The common-law 6-months' notice period for year-to-year leases was adopted with the needs of farming enterprises in mind, and it was felt that, where the parties had not previously agreed upon a time for termination, the tenant needed at least 6-months' notice to prepare for moving.

But the length of notice needed to minimize the losses incident to moving varies considerably with the type of farming. A date could be set with regard to the farming practices in the particular State. Such a notice, required by statute, probably should not be substituted for notice periods to which the parties agree but be required in addition to such notices; the requirement could be made effective by making the giving of such notice a condition precedent to any later suit to evict the tenant.

Rents, Liens, and Credits

From many points of view, the amount of rent which the tenant must pay for a farm is the most important factor in the landlord-tenant relationship. If the rent itself absorbs too great a part of the farm income, the tenant will not be in a position to adopt conservation practices which call for a captial expenditure. Indeed, the soil of many tenant-operated farms is being mined today because of the necessity for producing larger acreages of cash crops in order to meet high cash rental payments. Despite the immediate cash rent which they yield, these arrangements are detrimental to the long-range interest of the landlord no less than that of the tenant. Share rentals which require the tenant to put unduly large acreages in soil-depleting crops are as disastrous from this point of view as cash rents which are too high.

Regulation of Farm Rentals

Although it is well established that urban rental rates are subject to regulation by the State, at least during periods of emergency and housing shortage, there has been only one attempt to regulate rural rental rates, and this Texas statute, adopted in 1919, was declared unconstitutional by the Texas Supreme Court in 1920.

This decision throws some doubt upon the general power of the State to regulate the rental rates charged for farm land generally, but a close examination of the Texas experiment may indicate methods by which a valid regulation of rural rental rates could be achieved. The Texas statute merely adopted the customary rental rates in Texas as the maximum permissible rentals with the State, that is, the landlord was prohibited from charging a sharecropper who did not furnish his own equipment more than one half of the crop, and a tenant who did furnish his own equipment more than one-fourth of the cotton and one-third of the other crops. A fatal defect in this statute was its rigidity and its failure to make allowance for higher rentals for farms upon which there were superior improvements or which were adapted to other than the general type of farming in the State. In consequence, the Texas decision does not indicate that under proper circumstances provision for the setting of maximum rentals by a State commission, which had before it information concerning all factors relevant to the setting of the rent on a particular farm, would necessarily be invalid.

In evaluating the possibilities of rent regulation, it should also be remembered that, because of the recent tendency toward tractor-farming and consolidation of farm units, there are many areas in which there is such an oversupply of tenants that the factual conditions today in these regions are very similar to the factual conditions under which urban rent regulation has been upheld. Migration has been the most spectacular

social result of this situation; another result has been the addition of bonus and privilege rents to customary share rentals. These rents are expressed both in terms of actual cash payments and in the form of increased contributions by the tenants towards various items of farm expense. The task of determining what constitutes an equitable rental is a difficult one and a field in which little research has been done. Yet where rents are too high, the tenant will not only be without funds to engage in conservation, but will be forced to exploit the farm property.

Objections to the regulation of farm rental rates, from the legal point of view, stem from the doctrine of liberty of contract. It is recognized, however, that inequality of bargaining power may justify an exception to this doctrine; and it has further been recognized that businesses which depend upon the exploitation of natural resources are peculiarly subject to State regulation because of the permanent interest of the public in the conservation of such resources. If the standards for rent regulation were directed toward the prohibition of rental rates which were so high that they could only be met by the adoption of exploitative farming practices resulting in the eventual deterioration of the soil and a progressively declining agricultural productivity of the area, it is entirely probable that they would not encounter the legal barriers which caused the failure of the first experiment in this field.

LANDLORD'S LIENS AND PRODUCTION CREDIT

A majority of States give the landlord a first lien on the crop produced, and some of these States, in addition, give the landlord a lien upon the tenant's personal property. Even in those States, of which Wisconsin and Minnesota are examples, where the statutory landlord's lien does not exist, the bargaining position of the landlord is such that he can usually secure a contractual lien on the tenant's crop, if he so desires. The effect of these liens is to insure that the landlord's rent will be paid before the claims of any other creditors of the tenant. In addition, procedures for making the enforcement more expeditious in the case of liens than in the case of general unsecured claims, are afforded to landlords under the laws of many States. Third parties who purchase the crops or livestock of a tenant without the landlord's knowledge or consent may find that they are liable to the landlord in case the rent has not been paid by the tenant.

Even if these legal protections were not given to the landlord, the rent would remain the first charge against the farm income because, as a practical matter, nonpayment of rent would be cause for the landlord to evict the tenant, even though the lease, perhaps, had not expired. From the viewpoint of the tenant, however, the legal priority given the landlord may have three unfortunate consequences.

(1) He may find that the landlord's lien covers so much of his property that he is unable to secure production credit from third parties, except insofar as his landlord may be willing to waive his lien or guarantee his tenant's account. Credit for fertilizer, lime, or other supplies necessary for soil-building work is thereby made difficult for a tenant to obtain.

(2) In States where the lien covers more than the crop and the rent includes more than a share of the crop, the tenant will find that in a year of crop failure or extremely low prices his landlord may take not only the crop, but also his livestock and farming equipment, so that as a result of one bad year he is unable to continue farming. In most of the Southern States the landlord's lien is limited to the crop, but in Iowa, for example, the lien covers all property of the tenant except such property as is exempt from execution generally.

(3) As a result of the potential liability of a purchaser from the tenant to the landlord if the rent is unpaid, in many cases purchasers will buy only from landlords; except where a physical division of the crop has taken place, the tenant has little to say about marketing.

The landlord's lien is entirely the creation of statute; a State may confer it or withhold it. After the rental limitation statute, previously referred to, was declared unconstitutional, the Texas Legislature used this fact to achieve at least partial regulation of rentals. The present Texas landlord's lien statute provides that the landlord shall have a lien only in the event that

his share rentals do not exceed the maximum rates named in the statute which are the same as those provided by the invalid rent limitation statute. Through the adoption of this device, it was hoped that comparative surety of collection and the more expeditious procedure which the lien offers would induce landlords not to charge rentals beyond the maximum rates named in the lien statute, and thereby run risks in collection of the higher rates.

The statute has had some stabilizing effect upon share rentals, but has apparently been of little value in meeting the problem of rental rates. The statute is subject to evasion, moreover, through the making of payments to landlords, sometimes in advance, which are not called part of the rent and which may not have the effect of depriving the landlord of his lien under this statute. Careful drafting to close such loopholes is necessary if this device is to be adopted.

Some students doubt the desirability of the landlord's lien generally. The existence of a landlord's lien severely limits the opportunities of the tenant to secure production credit at reasonable rates. Under the "furnish system" in the South, whereby the landlord often supplies not only the land but the tools, equipment, supplies and cash necessary to make the crop, the landlord's lien has been extended to cover these advances, as well as the amount due for rent. Since he has no security that he may offer for a loan only with the landlord's consent and cooperation a tenant cannot take advantage of other methods of financing offered by private or governmental agencies. Waiver of the landlord's lien or a guarantee of the account is a practically universal requirement before credit will be advanced to tenants.

In this situation a landlord may force his tenants to obtain their production credit from him and, subject to the limitations of usury laws, charge them interest or time prices without regard to the terms which might be available to them elsewhere. These additional expenses play as important a part in the neglect of conservation practices and in the prevalence of rural poverty generally as the rental rate itself.

The Sharecropping Relationship

Economically, the sharecropping relationship is much like the relationship of landlord and tenant, but legally it is like the relationship of employer and employee. A sharecropper is a hired hand working for the person who has possession of the land; his wages are paid in the form of a share of the crop. A share tenant, on the other hand, is regarded as having rented lands to grow a crop of his own, though in practice the landlord often retains some supervisory rights over the tenant, so that the relationship may seem very much like that of sharecropping. Many landlords make advances for living and farm-operating expenses, particularly in the case of the cropper. As a practical matter it is often difficult to tell whether the parties, by their actions and agreements, have created a tenancy or a cropping relationship.

The census distinguishes between sharecroppers and tenants primarily on the basis of whether or not they furnish their own work stock, but this distinction is legally unimportant; the law does not follow census classifications. In most instances the parties do not label their agreements as cropping contracts or leases, and in any event the courts have held that such labeling is not conclusive.

The determination of whether a farmer is a tenant or a sharecropper is as important as it is difficult. If a farmer is a tenant, he has legal possession of the land. He need not allow the landlord to come upon the premises, and he is entitled to notice before eviction. If he is a cropper, the legal possession is in the landlord and the tenant is merely an employee. The landlord may enter the premises and discharge the farmer; the farmer has no recourse at law to get back on the land, and has only a suit for damages for breach of an employment contract, which is of little real value.

One State, Alabama, has met this problem by abolishing the legal distinction between tenants and croppers and making tenants of all farm operators who receive a share of the crop. This elimination of the sharecropper status changes neither the farming practices nor the form of rent. Under it the landlord may

exercise as much control over farming operations as the parties desire. But though the form of rent is not affected, the crop belongs to the operator with the rent secured by the landlord's lien. The practical effect of this law is to give the sharecropper the same degree of stability and security that the tenant now has and to eliminate disputes over legal technicalities.

Many States now have labor laws containing minimum-wage and maximum-hour provisions, and workmen's compensation laws to protect injured employees, but in virtually every case, agricultural labor is excepted from their operation. If it were not, the legal position of a farm laborer and sharecropper would be on a par with that of an unskilled industrial worker. Extension of such labor laws would probably result in a rapid rise in the tenancy relationship, rather than the sharecropper relationship, since landowners would not like to assume the burdens which these laws place on industrial employers.

In the field of protecting the interests of children, there is some break in the practice of not including farm families within the benefits of social legislation. In many States compulsory school-attendance laws apply to farm children, although the school term is often arranged to cover periods when their labor is not needed. Child-labor laws generally do not apply to croppers; the landlord secures the labor of the entire family through a sharecropping contract. A Kansas court has held that that State's child-labor law applies to the employment of children in agriculture as well as in industry, but sharecropping is not a problem in that State.

Actually, the sharecropper is a hybrid—he is neither a laborer nor a tenant. Because of this situation, it may well be that consideration should be given to the advisability of treating sharecroppers as economically and legally distinct from either tenants or laborers. If this were done, the law should define the newly created sharecropping relationship and give the sharecroppers much the same protection accorded the tenant. The question of possession of the property, title to the crops, termination of relations, liens and such items would be of particular importance. Because of the close relation between sharecropping and the furnish system, terms of credit might also be defined. Such action might serve to stabilize the sharecropping status and at the same time provide the sharecropper with a means of securing capital and guidance which would prove highly advantageous.

But significant adjustment in the present law governing the sharecropping relationship must be undertaken with a simultaneous view to the law governing the status of tenants and the status of wage laborers. Much moving back and forth from one to another of the three categories now takes place; a significant adjustment made in the legal status of sharecroppers would tend to cause landowners to do away with their sharecroppers and hire wage laborers and similarly, an adjustment of the agricultural laborers' position would cause an increase in the farm tenancy relationship. To accomplish the ends sought, tenancy reforms must simultaneously cover the legal relationship of landlord-tenant, landowner-cropper, and agricultural employer-employee.

Settlement of Disputes

Stabilization of landlord-tenant relations is greatly facilitated by the existence of a known and agreed procedure, capable of operating quickly and cheaply, for the settlement of disputes. Under present court procedure, costs are high and decisions often suffer from lack of familiarity with agricultural problems on the part of lawyers and judges.

At common law, an agreement to arbitrate remains revocable until an award is made. If one party revokes the agreement, the other party cannot compel the continuance of the arbitration or enforce any award which might subsequently be made; he can only sue for damages and possibly recover items such as the expense to which he had been put in connection with the uncompleted arbitration. In some States it is necessary to sue on the arbitration award; in others arbitration agreements may be filed with the clerk of court and the award will be made the judgment of the court on an appropriate motion. In some jurisdictions ar-

bitration may be made a condition precedent to suit and specific enforcement of an arbitration contract secured. Arbitration agreements are generally held valid and the awards enforced—in the absence of fraud—if the parties actually submit the dispute to arbitration.

Several means of improving present arbitral arrangements are being discussed or put into actual operation, devised primarily with a view to obtaining quick action by arbitrators who are thoroughly familiar with farm-tenancy problems. One suggestion recommends the appointment of a group of qualified arbitrators with the parties free to choose any member of this panel to arbitrate their dispute. A second suggestion recommends the naming of local committees, organized in the same manner as debt adjustment committees, to settle all disputes brought to their attention. An urban approach to landlord-tenant problems which appears suitable for use in rural areas—and which has, in fact, been tried in Scotland with notable success—is the creation of special courts or the use of regular courts assisted by experts. The District of Columbia now has a special landlord-tenant court assisted by a social scientist qualified to analyze urban tenancy problems. Landlords and tenants may appear before this court in person without the expense of hiring lawyers and obtain satisfactory and economical adjustments of their differences. A fourth method of simplifying legal procedure is now in practice in Virginia where one trial justice for each county has been substituted for the numerous justices of the peace. Aided by an informal procedure similar to that of some domestic relations courts, and with the power to encourage compromise, such a judge can make important contributions to the satisfactory settlement of landlord-tenant disputes.

The State as Landlord

When a State owns agricultural land, it has an opportunity to set an example through the adoption of forward-looking leasing practices. The State may also adopt a disposal policy in regard to State-owned land, which will enable persons who otherwise would be tenants to acquire land and become owner-operators. Oklahoma has taken important steps in the establishment of desirable leasing practices on its school lands, and both Oklahoma and Arkansas have recently adopted policies for the disposal of State-owned land designed to place this land in the hands of owner-operators.

Any adequate scheme to utilize State-owned lands in the solution of a State's farm-tenancy problem must be based upon a sound classification of the lands to insure that only lands suitable for agriculture are placed in the hands of farmers. An enlightened State policy with regard to terms of homesteading, sale, or leasing, is foredoomed to failure if the land itself is not good enough to support a farm family.

This does not mean, however, that the land included in such a plan must be land which is now utilized for agriculture. There are many areas which are at present tax delinquent or in the hands of the States for other reasons, which could be made suitable for agriculture by clearing or draining, and other areas where conservation work, such as the restoration of grass for grazing, is necessary if the land is to be used by farmers. These lands could be used for settlement by farm tenants if proper terms were offered for the acquisition of the land and if arrangements were made for the financing of improvements. Credit through the Farm Security Administration has been made available for such expenses in connection with the State land programs in Arkansas and Oklahoma.

Preferable to such an arrangement may be a plan such as is provided under the Arkansas Land Policy Act permitting farm tenants to homestead State lands; more land may be used for agriculture if the entire income from the farm may be devoted to the support of the farm family and payment for improvements. The tenant who takes advantage of such a policy must meet repayments on loans for the construction of farm buildings, for clearing, and often, for drainage. In the long run, a State may find that the tax revenues from the taxation of prosperous farms will mean more to it financially than the revenues that might be derived from a program which required the undeveloped land be sold.

But in many instances, because of the constitutional limitation or because of the condition

upon which the original grant was made, a State may be unable to adopt a policy which would permit homesteading. If land in these States is to be placed in the hands of farmers rather than landlords or speculators, the terms of sale must be such that actual farmers who are now tenants may become purchasers. If the sales plan demands an appreciable down payment or a short period of amortization, the State will find that only landlords and speculators can attempt to buy land. This problem has been met in Oklahoma through the offering of State school land for sale with a 5 percent down payment and the remaining payments amortized over a 25-year period at 3 percent interest.

An even larger number of tenant farmers would be enabled to take advantage of opportunities of this type if a plan similar to that used in the tenant-purchase program under the Bankhead-Jones Act were adopted. The down payment in this program is eliminated and the remaining payments amortized at 3 percent interest over a 40-year period. On many farms, Oklahoma has constructed buildings, so that the purchaser is under no additional expense for improvements. This is not an essential feature of the plan, however, and a State which did not feel justified in investing capital in such improvements could adopt a plan which would contemplate the financing of improvements from other sources and would allow some security for those who finance the building of improvements.

In many of the States where both the tenancy problem and State-owned land problems are important, there are great variations in crop yields and in prices received for agricultural products. Indeed, much of the land now in the State's hands has, at some time, been in private ownership and the owner has lost it because of these hazards. Purchase plans are therefore more likely to make a contribution to the solution of the farm-tenancy problem if they are guarded by the adoption of a variable payment plan under which payments can be increased in years of high yields or high prices and reduced in years of low yields or low prices.

There are, in addition, many instances in which it may be desirable for the State or its local units to plan to retain title permanently to agricultural or grazing lands. Although some States, through the device of the preference right lease, now endeavor to provide at least partial stability of tenure for their tenants, most State land-leasing policies mirror the defects of commercial leasing policies. If plans could be developed whereby land could be leased by the States for long periods with provision for the acceptance of conservation work, where needed, in lieu of cash rent, the States would find that the value of their farm properties was being increased and that the long-time returns of the State from those properties would be greater. In States where leasing practices designed to encourage conservational farming are adopted for use on State land, it is reasonable to believe that private landlords will be influenced by the success of such a program to adopt similar policies in the leasing of their own farms.

The Structure and Function of Rural Local Government

THE CLOSE relation between patterns of rural land use and patterns of rural local government requires little demonstration. In farming areas, the pattern of settlement largely determines the extent of the public services—such as schools and roads—which local government is called on to supply. Conversely, the pattern of public services may have a considerable effect on the occupancy and use of land. The productivity of this same land provides, or fails to provide, the tax base which makes adequate local support of such services possible.

Farm real estate and other land resources are far from exhaustible as a tax base; property-tax yields must be used as effectively as possible in supporting local public services. Tax burdens accumulated for the operation of local government units, together with the assessment practices by which they are allocated, may be a critical factor in the use and ownership of land. (For example, heavy taxation of forest lands from which income must be long deferred, will cause serious tax delinquency or rapid exploitation of resources.)

As the pattern of rural land use changes, comparable changes in the structure and operation of local government are required. In a number of States in the Great Plains, shifts in land use from farming to ranching together with declining tax base, land abandonment and tax delinquency are now raising the question of revision of local governmental organization. Counties with several hundred thousand acres in public ownership and large extents of land held under tax deed or chronically tax delinquent, are short of tax base and current revenues. Declines in both revenue and population are rendering extremely costly the full-time maintenance of county administrative agencies required by statute.

Similarly, in cut-over and other areas where resources have declined, there is no longer sufficient taxable value or sufficient population for efficient and solvent operation of the structure of government set up 50 or 100 years ago.

In still other areas, changes caused by modern technology, particularly rapid transport, or by the spread of urban settlement into counties that were formerly agricultural, require reconsideration of the structure of local government. Not all the jurisdictions established many years ago are appropriate to modern needs. Unless smaller units are consolidated into fewer and wealthier units and functions are transferred from smaller to larger governmental areas, financial difficulties may ensue, essential services may suffer, State financial aids may be wastefully applied.

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According to a recent survey, there are some 175,369 local government authorities in these United States. These units include:

School districts	127,108
Counties	3,053
Incorporated places	16,366
Townships and towns	20,262
Other units	8,580
	175,369

In this multiplicity of small units lie many of the weaknesses of rural local governments as now constituted: Diffusion of taxing and borrowing power; duplication of functions, officers and equipment; wastes in purchasing; heavy overhead costs; wide variations in tax resources, tax burdens, and quality of services; lack of unity in planning the location and quality of public facilities and appraising and supervising the administration of local services.

The relatively limited yield of the general property tax is raising questions both as to the size of the area which can be adequately covered, under modern conditions by a local government unit and as to the administrative set-up through which available funds can be so expended as to yield a maximum return in public services. The relation of local financing to State and Federal grants-in-aid and the administrative technique for the use of such joint funds also requires thought, in relation both to traditional public services such as schools and roads, and to more recent developments in health and housing and agricultural programs.

The same changes in the pattern of settlement and land use that are exerting pressure on the structure of rural local government are also affecting its functions. Among the newer functions recently assumed by local government, agricultural policy making and administration are of the first importance. Public policies for land use are currently expressed locally in the form of management of tax-reverted lands, rural zoning, and operation of soil conservation districts.

Increase in local interest in the structure and function of rural local government is reflected in a number of State statutes and constitutional amendments passed during recent years that provide counties and other units with the authorization necessary to adjust their structures to current conditions. North Dakota and New York, among other States, have recently authorized such adjustments. A few counties have already made use of the powers thus granted to adjust their internal organization and functions and to concentrate administrative responsibility. Elsewhere, arrangements for intergovernmental cooperation have made possible results similar to those obtainable through changes in structure.

Various States have established commissions to study desirable changes in rural local government in the interest of economy and efficiency and of adjustment to changes in land use and occupancy. Reports covering New York, Virginia, Michigan, and other States are now available, and surveys are in progress elsewhere. The subject has also been canvassed by research agencies such as The Brookings Institution. The following pages review both the present situation in rural local government and various proposals pending and acted upon, for aligning it with current developments.

The problems here discussed are administrative, not political. The forms of rural local government current in the past were based on the assumption of democratic control. So are the forms currently proposed for adoption in the present. The question at issue is a question of putting into use the best available technique for attending the people's business, a technique which will apply available funds to the best advantage and thus carry into efficient execution the public policies of the citizens of the area.

The Structure of Rural Local Government

In most States, the county is the principal unit of local government, though in the New England States the town is of greater importance. There are two general types of county administrative organization, the *commission* form and the county *manager or executive* type. The commission form is the older and more prevalent. In the manager form, authority is vested in an executive head, whereas the commission type is characterized by diffusion of administrative responsibility.

The Commission or Supervisor Form

Under the commission plan, a board of commissioners is elected by the voters of the county for a given term. Election is either at large, or from districts, or by a combination of these methods. A variation of the commission form, used in a number of States, including New York, Michigan, Illinois, and Wisconsin, is the *township-supervisor* type, under which each township is represented on the county board by a supervisor.

A number of other forms of the board system are also used. In Louisiana, the parish, which corresponds to the county, is governed by the police jury composed of members elected from wards. In Tennessee, the county board is called the county court and is composed of justices of the peace elected from districts.

Particularly under the township-supervisor plan, county boards are often too large and cumbersome for efficient administration. The county board, although it is authorized to manage the affairs of the county, is primarily a policy-making authority. The actual administration of county business, under the board system, is in the hands of the sheriff, clerk, assessor, collector, prosecutor, and various other officers elected for terms of office to perform special functions. Few counties have an administrative head responsible for the management of the county. The county board has little power to supervise the elected officers, to coordinate their activities, or even to remove them in case of inefficiency or dishonesty.

A growing need is being felt for a responsible administrative head to integrate the various departments of local government and achieve sound planning of services and control of expenditures. The chief method proposed for meeting this need is the county manager or county executive system.

The County Manager or Executive Form

The county-manager form is a rural application of the city-manager system, adopted by many municipalities. Under the county-manager system a policy-making board of commissioners or supervisors is elected by the voters. This board centralizes administrative authority in a manager whom it selects, and substitutes appointment for election in the administrative offices. This eliminates diffusion of responsibility among independent elected offices. Legislative powers and responsibilities are exercised by the board; through the manager, lines of administrative responsibility are established so that only one agency has charge of a particular function, and all related functions are consolidated. Associated features are the executive budget plan and centralized accounting and purchasing. Counties which now have the county-manager plan in approximately this form are San Mateo, Calif., and Durham, N. C.; a few others have it with some variation.

State Enabling Acts

Power to adopt the manager or executive type of organization is usually given to counties by the State either by optional laws or by home-rule laws. Under optional laws, counties decide by referendum to organize in one of several ways provided by the statute. Under home-rule laws, a commission may be appointed to draft a charter for a county (within certain definite limits provided by law), subject to approval by the legislature and local voters. The county-manager form of government is now authorized in eight States either by optional laws or home-rule statutes.

Constitutional amendment is necessary before the form of county government can be materially changed in a number of States, for many of the county offices are established by the State Constitution. It is possible, however, for legislatures to enact laws authorizing county boards to appoint administrative managers. North Carolina, in 1927, authorized such appointments, to be made on a merit basis, and not necessarily from among residents of the county. Under this law, Durham County appointed one of its members as manager, and the experiment has proved very satisfactory, especially in fiscal management.

Virginia amended its constitution to pave the way for liberalizing county organization, and in 1932, following the recommendation of the

Virginia Commission on County Government, the Virginia Assembly enacted a law making it permissible for counties to adopt either the county-manager, or the county-executive form. (The latter is similar to the manager plan except that the executive nominates and the county board appoints all department heads.) Arlington County adopted a form of the county-manager plan in 1930 under a previous State statute; and in 1933, Henrico County adopted the manager plan and Albemarle County the executive plan.

Montana amended its constitution in 1922 to permit the legislature to liberalize county organization. In 1931 the Legislature granted counties the option of adopting a manager form of government.

A county-manager plan of a limited type was made available to counties in New York by an act of 1935 which permitted the board of supervisors to appoint an executive who was in turn authorized to appoint certain administrative officers not required to be elected by the constitution. Monroe County approved this plan. The appointed manager was given fairly complete powers of budget approval and enforcement. Because of their constitutional status, however, such officers as the sheriff, surrogate clerk and judge, and a large county board of 43 members still remain.

By constitutional amendment also in 1935, the New York Legislature was authorized to provide optional forms of county government that would not require the election of constitutional officers. The following year a law was enacted providing for optional forms of county government, but it did not substitute appointment for election of constitutional officers.

Under home-rule statutes, cities in many instances have been allowed to draft charters conferring powers over a broad field of local affairs. Counties, by contrast, have generally been limited to the right to draft charters determining the form of county government, but not going beyond the sphere of powers granted to counties for the administration of State business.

California, in 1911, amended its constitution to permit county home rule. It authorized the election of a board of 15 persons to draft a charter, which would become effective when ratified at a referendum and approved by the legislature. A great deal of discretion was allowed in determining the form of government, but the powers and duties of the county were limited to those principally concerned with State affairs. Pursuant to the California law, home-rule charters were approved by 10 counties, including Los Angeles, San Bernardino, Butte, Tehama, Alameda, San Mateo, and Sacramento.

Texas, Maryland, and Ohio have amended their constitutions to permit county home rule; but the action allowed in these cases is either limited in scope or difficult of adoption; none has yet been taken.

CONSOLIDATION OF COUNTIES

Good rural local government today requires flexible laws to permit counties of meager resources and few functions to adopt forms of organization less complex and expensive than those in use. Not all counties need or can support the long list of officers usually specified by State constitutions or statutes. If workable combinations can be found, consolidation of offices is one means of decreasing costs by reducing the number of separate mandatory offices. Montana authorized such combinations under an act of 1934, and several counties have consolidated various elective offices. California counties offer other examples of recent action in these directions.

At the time counties were originally laid out, limited transportation and communication required them to be small in area. With the development of the automobile and modern communication, it has been found that their area can be increased substantially and more efficient service provided at lower cost. Many States have approved constitutional provisions or laws providing a procedure for consolidation of counties, though only two county consolidations have so far occurred. James County and Hamilton County, in Tennessee, were consolidated in 1919, and in 1932 the counties of Campbell, Milton, and Fulton in Georgia were

consolidated. In both instances material financial savings resulted.

Many reasons may be advanced for the failure of more counties to take advantage of consolidation laws. In a few States, consolidation procedure is complex and heavy majorities are required for approval. Consolidation means the elimination of one county seat, revision of political leadership, the loss of jobs by county officers, and the loss of business by vested commercial interests.

In some States, moreover, by constitutional or statutory provision, or even in the absence of specific provision, the consolidated county must assume all of the outstanding debts of its constituent counties. This may saddle heavy tax burdens on the residents of one of the counties to be consolidated. In other States, the situation is confused by constitutional and statutory provisions which do not clearly provide for distribution of the debt burden. The objection might be avoided by providing for existing debts to remain a charge against the areas of the original counties only, as is already the case in a number of States, for instance, North Dakota.

In thinly settled or declining areas, an alternative to county consolidation is county disestablishment, with administration transferred to the State or an adjoining county. The expedient of permitting a county to become disestablished and attached to an adjoining county for all administrative, judicial, record, and tax purposes is designed to eliminate county officers in the disestablished county and transfer their duties to officers of the county of attachment. The property within the disestablished county remains subject to special taxation to pay off existing debts and general taxation to defray its portion of the expenses of administration. The county of attachment does not have to pay any portion of the existing debts of the disestablished county. Thus, for all practical purposes, the counties are consolidated without burdening one of them with a portion of the existing debts of the other. The major disadvantage of this arrangement may be loss of political representation in the disestablished county.

Various authorities have urged that the proper approach to county consolidation is the bold one of ignoring present county lines and planning the entire State for new and fewer counties on the basis of the public services to be rendered and the availability of centers of common economic and social interest. According to some authorities, counties should contain a population of at least 20,000 and an area not over 6,400 square miles. If a population of 20,000 were considered the most effective size to perform services at minimum cost, however, almost 70 percent of the present counties would not qualify. Combination of 2 financially and politically weak counties with no common trade center may ease certain tax burdens but will not yield a fundamentally sound unit.

The purpose of consolidation is not necessarily to obtain a maximum population or area but to create a balanced political unit possessed of diversified and adequate tax resources and equipped to render effective public service. Consolidation is usually expected to effect economies through elimination of duplicate overhead costs and salaries and provision of a volume of work sufficient to occupy officials' full time. A host of practical political obstacles, however, has made actual accomplishment of consolidation almost impossible. Desirable adjustment seems therefore more likely to be secured through the alternative approaches of reallocation of functions, intergovernmental cooperation, and internal reorganization of county government.

The Township

Except for some incorporated areas and the wilderness areas of northern Maine, all of the New England States are divided into towns. These have not changed materially in form since the days of the original settlers. Although many of these areas are now densely populated, as in Connecticut, Rhode Island, and Massachusetts, the towns are not incorporated as municipalities and do not contain many separately incorporated villages.

Like local units elsewhere, the New England towns have, in general, not made major changes in respect to area administrative organization

and fiscal resources, but the town system in the New England States does make possible greater unity of administration than where local government is subdivided into numerous overlapping political units. Many New England towns of 5,000 population or less, still operate under the direct democracy of the town meeting as distinct from the representative democracy of boards and commissions used in larger towns and in townships and counties in other parts of the country.

Outside of New England, townships exist as significant political units in 16 States. In these States there are approximately 19,000 townships. The town of New York and the townships of New Jersey and Pennsylvania are politically unlike the New England towns, but are similar in that they are irregularly shaped areas formed originally by natural communities. Farther west the growth of township government was influenced by the Federal Government's policy of surveying the public lands into townships of 36 square miles. The civil or political township was organized to cover the same area as the congressional surveyed township, although sometimes several congressional townships were combined to form a civil township. The result was the superposition on sparsely populated areas of decentralized local governmental organization borrowed from New England. Thomas Jefferson hoped that the direct democracy of the New England town meeting would flourish in the townships of the Louisiana Purchase and Northwest Territory, but the pattern of land holding and settlement was not adapted to it. Settlers from the South brought the strong county form with them and the county is dominant in most of the Middle and Far West today.

Throughout the country, save in the New England States, there has been a marked decline in the importance of the township as a local governmental unit, although the trend has been stoutly resisted. In the West, the survey townships have not been suited to the patterns of land utilization characterized by large and relatively isolated farm and ranch units. Large numbers of separate incorporations have withdrawn parts of the township area from its jurisdiction; and the residual small local units serve scattered farm groups. Movements have therefore grown up to transfer to the county or State township functions in secondary road construction and maintenance, health and welfare and tax assessment and collection. The township-unit school district, as used in Indiana, North Dakota, and South Dakota, is generally considered more effective than the usual smaller common school district, but since it does not normally represent a natural community, the consolidated district and the county unit school plan are held in still greater favor.

Laws in Illinois, Missouri, and Nebraska provide for county referenda upon the question of whether townships should be continued or abolished within the county. Minnesota enacted a law in 1931 which requires townships to become disorganized if they have been inactive for a certain number of years. The statute also permits voluntary township disorganization. A 1933 law in that State also provided for dissolution if assessed valuation declined below or tax delinquency rose above certain levels.

The elimination of the township as "no longer a satisfactory organization for the administration of local services" has been recommended by the committee on county government of the National Municipal League. Four suggestions made by the committee recommend legislation to provide: (1) Constitutional amendments where necessary to permit county home rule or optional plans of county government under which townships could be abolished, (2) county option as to the continuance of township organization, (3) transfer of township functions to counties, and (4) disorganization or consolidation of townships.

THE SCHOOL DISTRICT

School districts, the most numerous of all governmental units, commonly possess their own powers of borrowing and taxation. They may sue and be sued, enter into contracts, acquire property and, in many instances, exercise the right of eminent domain. They have power, subject to some degree of State control, to make rules for the management of local

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affairs, including the regulation of pupils and teachers.

School districts are usually organized under an enabling act that applies throughout the State. The act does not generally establish districts, but permits them to be organized upon a petition of parents or guardians of a certain number of children of school age, after notice and hearing. The affairs of each school district are managed by a board.

As pointed out under the discussion of townships, the rural school district may often coincide with township boundaries while existing as a separate political entity. This is true in Pennsylvania and several other States. In New England, the town is the school district and administers school affairs along with all other services. In 11 States of the South and West, the county is the area for the school district. In 26 States, however, small rural school districts do not coincide with any existing political boundary. Many small community districts, of smaller area than a town or township, maintain one-room, one-teacher schools. District lines sometimes split up the area of a county into irregular shapes and patterns or overlap county lines. Many districts are organized along railroads in order to include valuable taxable property; districts organized later may have the grotesque shapes of residual areas.

Several States have established statutory procedure for the consolidation of school districts and many consolidations have occurred.

As in the case of counties, an obstacle to consolidation has been the requirements in some States that the new consolidated school district assume all the liabilities of its constituent districts. This objection can be eliminated by providing that the debts of each district shall remain a charge against the taxable property within it and shall not be a general charge against the consolidated district.

As in the case of counties, consolidation of school districts should be undertaken only after careful planning. The entire State should be divided into appropriate school-administration areas that are based on distribution of population and transportation facilities. When consolidation has not proved effective, it has often been because it is conducted on a piecemeal basis, following immediate expediency rather than a comprehensive and long-time program. As districts are usually consolidated in their existing forms, prior inadequacies of area and tax base are often not rectified but merely combined. The fact that all districts concerned must approve the consolidation has permitted wealthy districts to refuse to combine.

OTHER UNITS OF LOCAL GOVERNMENT

In addition to counties, townships, and school districts, there are many other units of local government performing specialized functions. They include such units as drainage, irrigation, highway, road, health, sanitary districts. Among newer local government units of this sort are soil conservation districts (discussed in ch. 3).

Irrigation, drainage, and other special improvement districts are commonly independent quasigovernmental organizations, although they are occasionally administered by county officials. In view of the variety of types and functions of such districts, detailed treatment is not possible here, but certain general observations appear to be important.

Such districts have often been created without adequate planning and have been promoted for speculative purposes. Their fiscal record has been generally poor, as indicated by the number of defaults and applications to the Reconstruction Finance Corporation for refinancing. A common fault is the use of too small an area for spreading construction costs, with the result that properties in the district are excessively burdened. Districts should be planned with attention to other tax burdens in the area and the ability of farm properties to bear the burdens incident to the special improvement. This raises the question of whether these enterprises should be approved by a State agency and whether small districts should be placed under county authority in order to reduce overhead costs. Consolidation of the numerous laws authorizing special improvement districts would simplify procedure.

The case of one special-improvement district illustrates the importance of adequate planning. In this district, general-tax and district charges

will soon amount to more than $5 per acre, in addition to heavy initial costs of land clearing and development. Extensive tax delinquency is occurring on agricultural lands, despite the fact that more than half of the total assessed benefits have been charged to urban, utility, and other nonagricultural property. The great size of the district makes its operation costly. It is 140 miles long, 1 to 6 miles wide, and has an average of 80 acres of agricultural land per mile of irrigation canals; 150 acres per mile of drainage ditches; and 280 acres per mile of levees. Obviously, the maintenance costs of such extensive works cannot be sustained by such small uneconomic sized farm units as are found in this district.

The mere statement of debt limits in statutes has not usually been an effective control over the creation of debt. The situation requires close central supervision of debt creation, consideration of all debts of overlapping units, and scrutiny of the need for the public improvements to be financed. In cases of default, State assistance might well be provided in planning refinancing, compromises, and financial management. Where scaling down of principal is involved, as is necessary in many instances if reorganization is to be achieved, the States cannot legally act to bind minority creditors. This was the purpose of the Federal Municipal Bankruptcy Act, which has been extended to June 30, 1942. Although, originally, counties were not authorized to avail themselves of its benefits, it has now been amended so as to apply to all units of local government. (Public No. 669, 76th Congress.) Up to now, however, this Act has been mainly used by drainage and other special improvement districts.

The Function of Rural Local Government

Sound organization of local government requires that each function be assigned to the unit that can perform it most efficiently, with adequate control retained by local voters. With limited revenues to finance increasing public services, local government must gear itself to produce greater service at the lowest cost if its replacement by centralized State administration is to be avoided. One of the present weaknesses of local government is that, instead of the size and character of local units being varied to fit different types of economic development and different population densities, the same pattern has been generally applied and not altered with economic and social changes. For this reason, the New York State Commission for Revision of the Tax Laws proposed territorial classification of the State for local government. Direct State administration was suggested for forested areas, with more intensively organized local forms to be used in areas of increasing population density. In many States, however, the adoption of such a plan would require State constitutional amendment.

Schools

The public school system accounts for one of the major costs of local government and the local units which administer it are the most numerous in our decentralized system.

Curriculum, teaching methods, and school plant and facilities have long been subjects of study and many changes have been made in these aspects. The area over which the local school program should function to assure economy and effectiveness, by contrast, has received little attention until recently.

Three functions have historically been assigned to the administrative units responsible for the public school system:

(1) To provide attendance areas through which the basic educational program is carried on.

(2) To provide for the administration of the system.

(3) To raise funds for the support of public schools through a tax levy on the assessed valuation of the property within the area.

The way in which these functions are performed and the area over which they are extended will determine the ultimate efficiency and quality of the school system.

Attendance Areas

As the school district originally expressed the desire of citizens in an area to supply educational facilities for their children, its boundaries

usually meandered along the lands of the families concerned. Irregularities in district formation were promoted by the fact that it was often financially advantageous for districts, largely supported by the property tax, to include rich timber stands, mineral deposits or railroad rights-of-way. Since the schoolhouse had to be within walking distance of the homes of its pupils, the size of the district was necessarily limited. Where the boundaries of towns or townships were followed, some of the irregularities in shape were avoided, but even regular formations were not always suitable from the administrative standpoint.

Advances in educational standards have resulted in the demand for attendance areas which provide an extensive curriculum, costly materials, specialized teachers, a graded system including both elementary and secondary education, and a well-equipped building. Neither the modern program nor the building to house it can be justified economically unless utilized to near its effective capacity. The school district, therefore, must now include an area sufficiently large for the number of children within it to approach the level required for economy and efficiency in the educational program. School transportation further influences the organization of the school district, since the attendance areas must be set to permit economical transportation. Revision should therefore logically start with determining attendance areas.

County unit school system.—A number of States, of which West Virginia is an example, have turned to county-unit organization. In most instances the county unit is an improvement over the local district. In areas of dense settlement, it is possible that no advantage is gained by utilizing an area as large as the county, and communities may be more appropriate bases for districts. But in other areas, especially areas of sparse settlement, if the county is an adequate unit, it may also prove to be desirable as a school unit. The larger area permits greater flexibility in the location and operation of school plants and in transportation as changes occur in land use and occupancy. Large numbers of separate boards and officers and numerous special rate taxing areas may be eliminated. The county unit has the equalizing effect of opening a broad tax base for the use of all districts. County-wide levies and collections reduce the amount of work necessary in apportioning tax and State aid moneys among hundreds of small districts and simplify the work of extension of levies at many different rates in the tax books.

High-school districts.—Recent recognition of the effect of area organization on school efficiency has come largely from the acceptance of the high school as a necessary part of the public-school program.

Realizing that many of the smaller districts cannot provide high schools, all States have made provision whereby students resident in elementary districts can attend high school at centers where such schools can be supported. Districts maintaining high schools are usually reimbursed by tuition payments for the attendance of pupils from areas outside their jurisdictions. Michigan law permits children in districts not maintaining high schools to attend any accredited high school of their choosing and their tuition up to $100 is paid by the State. In the State of Washington, districts not operating high schools are subject to a tax equaling the maximum levy under tax limit laws for high-school purposes in the high-school districts. The proceeds of this tax go into a special fund which is distributed by the county superintendent to the districts in which the children from districts without high schools are enrolled.

Provisions of this kind have eased the pressure of the problems resulting from unsound district formation. But power to issue bonds for new school construction and other capital outlays is often limited to a percentage of the assessed valuation of a district; where this is so, increased expenditure for capital outlays necessitated by the attendance of children from nonhigh-school districts exhausts the bonding powers of the districts where the schools are located, which then becomes unable to provide needed capital improvements without diverting funds from current operations.

Problems of representation in high-school affairs have been overcome in many States through union high-school districts. The union high-school district is organized as a special district

for the purpose of providing high-school services to the residents of its component elementary districts. The chairmen of the elementary district school boards become the union high-school district board. The union district levies its own tax for high-school purposes and provides its own facilities.

Administrative Areas

Just as the costs of a specialized teaching staff, an extensive plant and a widely ranging transportation system have to be spread over a considerable area, so also does the cost of school administration. The unpaid school board, drawn from the citizen body, functions today chiefly as a policy-making group; the specialized business of running the schools is in the hands of a trained administrator. The district must therefore be large enough to obtain a qualified person without making administrative costs disproportionately high.

School Finance

Until recent years, the general property tax has been almost the only source of revenue for school districts; in some States it still is. Where a district is not fortunate enough to have valuable property, it is difficult to raise sufficient local tax revenue to supply adequate services, especially in thinly settled areas.

State aid has developed to meet this situation. It has taken the form of grants from permanent school funds, State general-fund appropriations, or State taxes earmarked, in whole or in part, for local public schools. Permanent school funds were created largely from proceeds of the sale of Federal lands granted to the States during the latter part of the nineteenth century. Other productive sources of State aid funds include sales taxes and income taxes. The Federal Government furnishes funds to the States for extension work in agriculture, home economics, and vocational training.

State aid to local school units has been distributed on the basis of a given sum per pupil; per teacher; per teacher-unit of a certain standard number of pupils; or on the basis of several such factors. Equalization grants supplement the yield of a minimum local tax rate until a certain standard is reached. But where lack of financial resources results from faulty organization, the effect of equalization and other State aid provisions is to freeze small inefficient structures.

Delaware and North Carolina have carried State aid to the point of virtually complete State support of local school-operating programs with wide powers of direct administration and supervision. New York and Missouri have revamped their State-aid procedures to give heavy State support without providing for adjustments in local school organization; these States now face the difficult problem of promoting local programs of consolidation to eliminate small and inefficient rural units. West Virginia recognized this problem and accompanied its greatly increased State aid with legislation abolishing small districts and establishing counties as the minimum areas of school administration.

Recent Programs

Since the depression, the general decrease in governmental revenues has turned the attention of school administrators to the relationship between district organization and efficiency, and resulted in school-adjustment programs of considerable scope.

The most concerted effort in this direction has been carried out through the Office of Education of the United States Department of the Interior. Funds granted under the provisions of the Emergency Relief Act of 1935 made possible State-wide studies of local school units in Arizona, Arkansas, California, Illinois, Kentucky, North Carolina, Ohio, Oklahoma, Pennsylvania, and Delaware. Results of the findings of these studies are reported in the publication of the Office of Education, Local School Unit Organization in 10 States.

More detailed reports have been published by most of the individual States involved. Similar studies under grants from the Works Progress Administration have been made in Colorado, Idaho, Texas, Utah, Wisconsin, and Washington. Several States have included a study of local school unit organization as a part of their regular State programs.

These studies have done much to create a fuller

understanding of the relationships between school organization and efficiency, and should be carefully considered by individual citizens and rural community groups. They suggest procedures for evaluating educational units, trends, and objectives; for translating the educational objectives of the various States (which are not all the same) into standards of adequacy for the school district; and for creating administrative machinery to help reorganize districts which meet the standards. The studies also point to the need for legislative changes and place emphasis on making State support for schools contingent upon adequate local organization.

ROADS

The function of constructing and maintaining rural highways is usually performed by some combination of the State, county, town or township, or special road district. On the average, as much as 10 to 20 percent of the road mileage in a State is in county roads, and 60 to 80 percent in township or other secondary roads. In 1930, total local road mileage amounted to 2,654,570 exclusive of primary or State roads. In volume of expenditure, road construction and maintenance is second only to education in most States. Roads are of major importance to land utilization because of their influence upon land development, settlement, and marketing.

Road construction and maintenance have historically been local functions. The great increase in Federal road aid brought centralized State highway departments, but did not at first directly affect county and township highway systems, because Federal funds were available for only a relatively small proportion of the gross highway mileage in each State. State systems have generally been linked with national trunks, but local road construction has sometimes been poorly tied in with primary systems.

As administrative and operating units, small road districts have great disadvantages under modern conditions. One of the greatest wastes is in the purchase and utilization of road materials and machinery; expensive equipment, used for only a few months of the year, may duplicate State or county machinery which could be used in the same area.

In Kentucky, more than 460 road districts existed at one time with no engineer in charge, general supervision being left to magisterial district officers. In Pennsylvania, more than 1,500 second-class townships have as their chief function the supervision of small secondary road mileages. Such systems yield no unified road plans; poor cost records are maintained with no distribution between maintenance and construction costs; there is no basis for judging expenditure and much unnecessary construction is undertaken. A technical survey in New York showed that in only 5 of 53 counties were average town maintenance costs per mile of road lower than county or State costs, and in all instances State and county maintenance was of superior quality.

As in the case of other local public services, excessive subdivision of areas creates great inequalities in assessed values between road districts. This results in serious differences in ability to raise general property-tax funds and in the quality of roads built. It is common for State motor-vehicle taxes to be retained for use on State highways or, if shared with local units, to be restricted for use on roads under close State supervision. Nevertheless, large sums continue to be distributed to small road units by the States without supervision as to efficiency of expenditure.

The ultimate answer to excessive road-district subdivision may be State assumption of maintenance, or at least transfer of extremely localized road functions to counties or larger areas. Many secondary roads have already been absorbed in State systems, but this trend is not rapid, despite the fact that local control is generally felt to be less important in the case of roads than in the case of schools and efficient engineering and good service at reasonable cost are often desired.

North Carolina, prompted by poor quality and high cost of road service under decentralization, marked inequalities in taxpaying ability between counties, and unrestricted expenditure of State-collected revenues apportioned to counties, undertook complete State centraliza-

tion of highway functions in 1931. The transition disclosed that few counties knew how much mileage was contained in local road systems; no up-to-date maps were on hand; types and qualities of construction differed widely; accounting practices were poor and expenditures extremely variable. At present, counties in North Carolina levy property taxes for highway purposes only to retire old road debt. Similar centralization has been effected in Virginia and West Virginia.

Such complete State centralization has not been undertaken in other States, but most studies indicate the desirability of a larger unit in place of towns, townships, or small road districts for highway administration, though the unit should be small enough to permit the administrative authority to be thoroughly familiar with local conditions. According to these studies, the unit for highway functions should be of such size as will economically justify full-time technical advice and engineering, procurement and control of maintenance equipment, and scientific cost and traffic records. This suggests the use of the county or joint county unit as the minimum area, with possible provision for State approval of highway improvements.

WELFARE

The public-welfare function of local government covers a wide variety of services, including care of the poor, delinquent, criminal, insane, vagrant, and blind. Care of the poor by towns, townships, and counties has taken the forms of "indoor" and "outdoor" relief, pauper relief, county homes, poorhouses, and farms. Long traditions of extremely localized responsibility for public welfare services have recently been altered with the development of enlarged State and Federal programs. Provision for many welfare cases is now made directly by the State through its institutions for medical and mental care, schools for the handicapped, and pension systems.

As towns, townships, and even the typical county have been considered too small to support the full-time services of workers trained in this field, insufficient attention has often been paid to social rehabilitation. Many county homes and farms have less than a dozen inmates; their superintendents often have little training in public-welfare work.

The principal defect in present local welfare organization is not only the small size of local units, but the lack of a single responsible authority to direct and coordinate the various welfare services in a consistent program. For example, the county farm may be under the county board of supervisors; delinquent children under the juvenile court; outdoor relief under the county board or township directors of the poor; and other types of services under appointed directors. Local administration of the welfare function can be strengthened by integrating the various services under a single authority, with qualified personnel to carry on the work.

To attain these ends, the unit of administration must generally include an entire county; where conditions warrant, two or more counties or parts of counties might join to perform the service. It is generally desirable for the boundaries of welfare districts to be the same as those of health districts. It may be useful for a State agency to classify the entire area of the State according to local welfare conditions and needs, so that legislation can be framed to meet the organizational requirements of public welfare programs. If this direct approach is not possible, county and joint-county welfare districts offer a feasible arrangement. The joint maintenance of certain institutions, such as almshouses and tuberculosis sanitoria, has already been undertaken by agreement among several counties in Virginia and California.

A consolidated welfare system based on a county unit can operate through a representative advisory county board of welfare, with an appointed welfare director given full administrative authority. The Indiana State Committee on Governmental Economy suggested such a county welfare board, to be named by the county council, with power to approve and supervise budgets and make appointments under a merit system.

Only through larger units and through unification of scattered welfare authorities can best use be made of the administrative and fiscal resources of the local area. It has been recom-

mended that State supervision be increased, standards of performance be set up, qualified employees be appointed from State-approved lists, and local financial practices, records, and controls be considerably improved. Since the financial responsibility for the welfare function is not entirely local, the development of a sound system of State aid for this increasingly important function is also needed.

HEALTH

The number of serious diseases and the high infant-mortality rates in many rural sections are sufficient indication of the need for adequate public health programs and proper systems of administration and support. Small local health units with inadequate fiscal resources and administrative organization are a survival of the days when little was known of public health requirements, and when the same small areas used for assessment, roads, and elections, were believed adequate for health purposes. In Michigan, there were at one time 1,160 township health officers (500 medical and 660 nonmedical); and in Minnesota townships, 2,700 local health boards. More than 2,500 local health authorities once existed in Ohio. In New England, the towns continue to serve as health units. One survey in Minnesota indicated that the average per capita expenditure for public health in 265 Minnesota places under 1,000 population was 9 cents, and for those under 500, 3 cents. Many spent no funds at all.

The county is probably the smallest feasible unit to provide public-health service with a complete and full-time staff. In some areas several counties would have to join forces to meet a budget adequate to provide efficient services. It may be desirable for the entire State to be classified as to needs and resources for local health programs; administrative units can then be planned with welfare and health units covering the same area. In some States, county health districts, comprising all or parts of a county, are permissible under existing law; in others, State constitutional amendment is necessary to supersede the system of town or township health officers.

The county health unit movement began in the States of Washington, North Carolina, and New York. Across the country, more than 500 county units are now in operation. Many have been set up in the Southern States where the United States Public Health Service has been active.

In a number of cases counties have combined to set up health districts. In New Mexico, 31 counties have been grouped into 10 districts with a representative of the State Health Department stationed in each. In Virginia, there are several instances of joint action by neighboring counties. Michigan, in 1927, authorized 2 or more counties, by vote of the supervisors, to form health districts; and 5 such districts, comprising 19 counties, were formed by 1933. Although the establishment of large special areas, without reference to the boundaries of existing governmental units, may complicate the administrative map somewhat, it may be necessary to obtain suitable and economical operating units.

State aids for county health units have been provided in Alabama and a number of other States, but for the most part this movement is still in the early stages of development. Increased attention to the system of State aid for these services is expected to result from Federal social-security legislation providing grants to States for public health and related services and the universal organization of active State health departments.

LAW ENFORCEMENT

Rural communities generally have little need for extensive law-enforcement organizations and have not participated in the modern movement for improved methods of crime detection. Most State constitutions establish in some detail the organization of the county and township government which is charged with law-enforcement activity. Consequently major changes are difficult, and most improvements have been made by the method of creating additional offices or organizations. As a result of this increase in personnel, and in some instances the inefficiency of the personnel, the cost of local government is large and the tax rate correspondingly high.

Greater efficiency and lower costs may often be sought within existing constitutional limita-

tions through the extension of State activities in the field of law enforcement. In many States, State highway patrolmen now carry on part of the law-enforcement duties formerly handled by the constables; elected fee-earning constables are coming to be replaced by county or State police. Through State training schools, efficiency can be increased by instructing local officers in the best methods of performing their duties.

In the judicial field, Virginia has taken the progressive step of providing a trial justice, who must be a competent attorney, for each county, to take the place of the large number of untrained justices of the peace who previously performed judicial functions in the State.

Where a constitutional office is retained, higher qualifications may be required of the occupants by statute. For example, it might be required that the coroner be a physician, and technical assistance from the State health department could be made available to him; where there is no constitutional requirement, the medical functions of elected coroners might be transferred to the State health department or to the county prosecuting attorney's office. The duty of fixing responsibility in cases of death by violence might be given to district attorneys or grand juries.

In only a few instances does a criminal have a constitutional right to be confined in the county in which he is convicted. Some States, notably North Carolina, have largely taken over the care and punishment of all criminals whether they have been convicted of misdemeanors or felonies, and have established district prison camps far superior to the county jails they superseded. Some counties, faced with the problem of housing convicts, have in the past adopted the solution of leasing their services to private individuals. This practice, which led to grave abuses, has been declining almost everywhere. The State or district prison camp offers a solution that is not burdensome to local units.

The smaller number of inmates in rural penal and correctional institutions, such as county jails and workhouses, does not usually permit proper segregation and occupation. Total cost per case is high. Counties might well join in the maintenance of larger institutions under State supervision.

Elimination of the administrative prison duties of sheriffs and provision for a regular accounting of fees has been widely recommended; in large counties, the office should be placed on a salary basis. Where counties are sufficiently large and wealthy, the establishment of county departments of justice, combining the work of policing and prosecution, appears desirable. The county police unit might be appropriate for urban and suburban counties, under the direction of a county official appointed from State-approved lists.

ASSESSMENT AND COLLECTION OF TAXES

Adequate assessment of property is fundamental to the structure of local general-property taxation. The importance of this governmental function is seldom realized because its cost of administration is low compared to that for the major services of roads and schools. Yet all local tax burdens are spread on the basis of assessment, and good assessment is a prerequisite to justice in the distribution of tax burdens among individuals and between districts. Rural assessments that give insufficient consideration to land use, market value, and income, are a major factor in tax delinquency.

Three or more different valuations of the same property by overlapping units are not unusual, even where State law requires assessment at full value. Use of separate records and different assessment methods, expediency of maintaining particular levels of valuation, desire to avoid tax and debt limits are all reasons for variable levels of valuation. Competitive undervaluation by minor units in order to lessen State or county taxes and increase State grants-in-aid is also common. All this makes extremely difficult the work of the State or county in attempting to bring valuations of minor units to a common level for State- and county-wide tax levies.

In about half the States, assessing officers are chosen for towns, townships, or equivalent areas. In other States, they are county officers. The office of assessor is usually elective and often on a part-time basis. Rule-of-thumb methods of valuation are prevalent, as is the copying of records of prior years for current valuations.

Some of the major reforms which have been

recommended are: (1) Use of an administrative area at least as large as the county and wealthy enough to support a full-time organization for scientific assessment; (2) maintenance of complete and up-to-date maps, property inventories, land descriptions, records of property transfers, land-classification surveys, and other essential data; (3) appointment of personnel on the basis of qualifications, without regard to place of residence; and (4) provision for salary and tenure adequate to obtain competent administration.

The use of special areas, wider than counties, for the basic work of assessment has been suggested, since small counties may not be able to afford or use efficiently the required quality of personnel. These State assessment districts would be completely State-administered. As a combination of local and State responsibility the Wisconsin system of local assessment, actively supervised by well-trained State employees, has been widely commended.

Duplication can be avoided by redistricting areas in which property is assessed by more than one agency. In this way, each district is served by a single assessor, supervising all those engaged in the process of assessment. Assessment offices should be organized on the basis of particular phases of the work to be done rather than a division of the territory involved.

Accurate assessments, particularly of properties extending beyond district lines and with no value unless treated as a whole, and properties of an unusual character and great value, can be made only by technically trained specialists, and State assessors are the only ones who have information as to location and value in such cases.

Efficient local tax collection, prompt tax-lien enforcement, and orderly handling and accounting of funds are also highly important to the local tax system.

In New York, each town, village, and school district is its own collector of current taxes whereas the county collects delinquent taxes. The fee system predominates, compensating thousands of local tax collectors, although it has been estimated that costs would be reduced by one-half if all collections were placed under the county treasurers. The town or township is used as the unit for tax collection in the New England States, New York, Pennsylvania, New Jersey, Michigan, and Wisconsin. In a few other States a combination of township and county is used. In 34 States, the county unit is used. Some school districts and many special assessment districts maintain separate collection systems, even when other taxes are collected on the same property by the county.

It has been strongly urged that the present collection of taxes by many district and township officers, working on a part-time or fee basis, be eliminated, and local tax collection centralized at least to the extent of (1) county-wide collection of all taxes and (2) custody of funds by full-time, bonded, salaried officials. On this basis, all taxes on a single piece of property would be collected by one agency, equipped to manage efficiently and economically the work of issuing tax bills and promptly enforcing tax liens. The importance of regular and efficient tax collections procedure is emphasized in chapter 4.

MISCELLANEOUS FUNCTIONS

Space does not permit complete discussion of the large number of miscellaneous general governmental functions which individually do not bulk very large in total expenditures but collectively are rather important.

For purposes of illustration, the offices of county clerk and register of deeds may be mentioned. These county offices are sometimes combined and are usually elective. The work of the county clerk and that of register of deeds is much more costly than is usually realized. The cost of deed recording is not as dependent upon area or density of population as upon the volume of business handled and the efficiency of office management. In small counties, the purchase of photostatic equipment may not be economical because of the small volume of work, but a district service for several counties would bring considerable saving. Photostatic service to rural county clerks might also be provided through a State department.

Other desirable improvements in miscellaneous functions of counties and other units are

uniform budget systems, regular audits, financial reports, and modern accounting procedure. Coordination of county department purchasing, and local use of State purchasing facilities, as authorized in Virginia, Nebraska, and New York, hold possibilities for further economies. Costs of printing and advertising are susceptible to economy in many counties and are much more expensive than commonly realized. Standardized record forms for all local units would bring material savings.

NEW ACTIVITIES

Rural zoning and the administration of tax-reverted lands, discussed elsewhere in this report, are illustrations of the new functions counties are coming to perform.

Soil conservation districts are new units of local government created to conduct local soil conservation programs, and have authority to adopt land use regulations. The programs of such districts and those of the counties should also be integrated. This is particularly important with respect to county activities in rural zoning and management of county lands reverting through tax delinquency.

Public housing, airports, utilities, forestry, and recreation represent other functions which local governments in rural areas may soon assume and for which they should prepare by strengthening their administrative units.

Methods of Readjustment

The preceding discussion of the structure and function of rural local government reveals the need for certain readjustments to provide: (1) Areas of sufficient size, population, and administrative capacity to allow efficient and economical performance of public services; (2) areas having a sufficient productive tax base to guarantee local support for local services.

The chief methods that have been followed or recommended to effect these readjustments have included consolidation of areas, administrative reorganization, reallocation of functions, and intergovernmental cooperation. Consolidation of areas and administrative reorganization have already been discussed in connection with counties and schools. The other two methods of readjustment have also been discussed briefly in relation to specific functions of local government, but their importance warrants broader examination.

REALLOCATION OF FUNCTIONS

The major difficulties of rural counties and townships arise from their efforts to act both as units for the performance of strictly local functions and as units for the support and administration of services which are wholly or partially State functions. Solutions that cannot be found by consolidations of areas may be reached by reallocation of basic services between levels of government.

Where counties are too small in area and weak in tax resources to support the administrative organization required for the adequate performance of certain functions, transfer of administration to State agencies may be desirable. This might apply to the administration of roads, health, welfare, tax assessment, and law enforcement. In the case of these functions, the interest in property-tax relief and equalization of services and tax burdens might outweigh the interest in local self-government.

Limited transfers of functions are now proceeding in many areas, particularly from township to county and State, and from county to State. The transfer of township roads and health functions to counties in Michigan, limited absorption of township road mileage by the State in Pennsylvania, and complete State assumption of county roads in North Carolina, Virginia, and West Virginia are illustrative. The New York Commission for Revision of the Tax Laws recommended the transfer from town to county of highways, tax assessment and collection, health and welfare; and the transfer from county to State of administration of justice outside incorporated areas. Even such a minor transfer as that of placing tax collection in the county and eliminating 8,000 school-district collectors, however, requires constitutional amendment in that State.

In Michigan, major reforms have recently been accomplished by the transfer of township roads to county systems and transfers of township health functions to county and multicounty

units. Local road agencies were reduced from 1,300 to 83, and these transfers were accompanied by increased State aid.

INTERGOVERNMENTAL COOPERATION

Although not as effective as reallocation of functions between units and levels of government, intergovernmental cooperation is another practicable method of readjusting local governmental services.

Intergovernmental cooperation is a system of effective agreements among local units for the the performance of a given service. In a sense, intergovernmental cooperation is a substitute for actual area consolidation in that it permits practical experimentation with transfers of functions and wider administrative areas. This type of cooperation is flexible and recognizes the fact that no single uniform area for all functions can be devised which will serve all sections of a State. Its principal disadvantages are that it complicates the administrative map, does not guarantee strong responsible administration, and avoids more thoroughgoing reassignment of functions among units.

Cooperation among counties, between counties and cities or towns, and among other local units can be applied to many services such as tax administration, health, welfare, highways, police and justice, libraries, and purchasing. It may be worked out on a contractual basis or on the basis of actual joint performance and support under State authorization. Sometimes joint districts are specifically set up by the legislature, but more commonly any two or more local units are authorized to act jointly under a board responsible to all units.

In 1935, Ohio authorized any county to contract with another county for performance of a county function and to enter into agreements with other local units to perform any service the latter were authorized to perform. California has authorized counties to contract with cities to perform municipal functions; and a New York home-rule amendment permits supervisors of two or more counties to make agreements for the joint discharge of one or more functions. A number of other States have authorized "functional consolidation" for specific services. In Washington, two or more adjacent counties maintain joint sanitoria; Virginia has authorized district almshouses and North Carolina permits joint hospitals. Michigan, New York, Indiana, and North Carolina have authorized joint health districts and cooperative welfare departments are permitted in Montana, Georgia, and Washington. California has a number of joint functional or contractual arrangements in force including maintenance of sanitoria, and city-county cooperation for health, service, tax collection, assessment, etc.

STATE AID

The general-property tax is relied on by many States as well as by local governments. The present tendency, however, is for State governments to replace their use of this tax with new forms of taxation and distribute some of these funds to relieve local property tax burdens.

State financial aids are classified as (1) grants-in-aid and (2) State-collected and locally shared taxes. Grants-in-aid are distributed under specific conditions and usually without reference to the origin of the tax funds used, in order to encourage the attainment of certain standards in education, highways, health, welfare, and other important services. Aids in the form of shared taxes do not have so many conditions attached to their use and are commonly distributed to the areas where collected. Ineffective use of these funds, and the frequently inequitable method of distribution, are bringing about their transformation to grants-in-aid. An example of grants-in-aid is the distribution of State funds on the basis of per pupil or per teacher-unit in order to assure minimum local school facilities. State income and motor-vehicle taxes, returned for general use by the counties where collected, are examples of shared taxes.

In determining local need and fiscal ability as the basis for distributing grants-in-aid, great difficulty is encountered due to the wide variations in the levels of assessment among local units and differences in the amount and type of taxable resources. Liberal grants may actually perpetuate uneconomic and inefficient units. The major solution proposed is the transfer of many heavily-aided functions to the State, or

the creation of local units large enough to make adequate contributions and to spend and administer both local and State funds efficiently.

The question of State financial aid for local services has been widely debated between urban and rural citizens. The objection of urban people that many rural areas receive far more from the State than they pay in State taxes is answered by rural groups by pointing to the interdependence of our economy, urban use of rural roads, and the flow of locally educated farm population to the cities. But the strong objection that rural areas receiving substantial State financial aids operate small inefficient units cannot be answered until such units are so reorganized that State funds are not wasted.

Even when suitable local units are established, increases in State aid for major functions are bound to require increased cooperation between such units and the States. If State funds are dissipated by poor performance, continued local performance of the particular functions will be seriously threatened.

Procedure for Rural Tax-Delinquent Land

In the United States are vast acreages of rural land upon which no taxes have been paid for many years. These lands are technically classed as "chronically delinquent."[1] Very frequently, they have been neglected or abandoned by their owners. Chronic delinquency is a major symptom of land use maladjustment. In rural areas, it is frequently associated with wholesale farm abandonment and migration of families to new areas. The land may have a dubious legal status as to ownership, which, together with abandonment of control by its tax-delinquent owner, subjects the land to neglect, or perhaps, destructive exploitation. Sometimes, the public has nominally asserted its own claim to ownership as a penalty for nonpayment of taxes; but only infrequently has the public sought or been able to exercise the effective control belonging to ownership. In a real sense, the delinquency domain is thus a no man's land, lying in the state of idleness and abuse, yielding nothing in taxes for the support of Government.

Some day chronically delinquent lands must either be restored to a responsible private ownership which will put them to productive use, protect and pay taxes on them, or be allotted to a public agency organized to manage and develop them beneficially. First, however, it will be necessary to clear up their peculiarly confused legal status. The State (or local government) obviously can neither make assured disposition of reverted land to private purchasers nor safely undertake a public develop-

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[1] The terms "tax delinquent" and "chronically delinquent" cover a variety of circumstances. Tax-delinquent land may be that upon which property taxes are from a few months to a year or more overdue, but which has not been put through any kind of tax sale; it may have passed through a tax sale but still be subject to redemption by the delinquent taxpayer; or taxes may be so long overdue that the period in which the delinquent owner may redeem or reassert his full ownership is about to terminate.

This report is concerned with chronically delinquent lands, which are considered to be those on which taxes have not been paid over a period of years sufficient long (varying from State to State) to cause them to "revert," or to be eligible for "reversion," to the State or local government. "Reversion" is a general term which has a variety of meanings, and its implications for unwanted-for tax-delinquent land vary among the States. The term has a connotation of finality and actual forfeiture which is not always the case in operation. "Reverted land" is usually intended to refer to land which has fallen to the taxing unit in lieu of tax payment, and on which the delinquent taxpayer's right to redeem has been terminated. The term is so used here.

In only a few States, however, does reversion mean a strong assertion of the rights of the government to final disposition of property upon which taxes have not been paid. In some States, under present law and procedure, the owner has an indefinite period to redeem from the State or county; the right to redeem may actually never expire. In many States, reversion means only that a certain period of inaction on the part of the delinquent taxpayer has caused the government to an manner that it has a claim to title, but little else.

ment program, as long as its absolute legal right to the land is dubious or even nonexistent. This chapter reviews legal and administrative difficulties in property-tax procedure, and some of the techniques for improving property-tax administration and simplifying the acquisition of clear title that are now in use or under consideration in various States.

Extent and Character of Chronic Delinquency

Chronic delinquency has already become, or is well on its way to becoming, a problem of major proportions in the cut-over areas of the northern Lake States and of the Ozarks, in the Great Plains, in the areas adjacent to the lower Mississippi, in some of the southern coastal regions, and in parts of the Middle Atlantic States, and of the Pacific Northwest. These are areas where, by reason of poor soil, selfish or wasteful use of timber, drought hazards or drainage difficulties, it has been especially difficult for the customary types of land use to yield a livelihood and to support the governmental services demanded by modern society. It is thus important not only to provide machinery capable of dealing effectively with long-delinquent lands, but also to make a broader attack upon a mixture of associated economic and governmental ills, which may be outlined as follows:

(1) Land wastage through neglect or abuse;

(2) Widespread abandonment of farms or of once-forested lands, often leaving stranded populations;

(3) Impoverished local government and financial distress;

(4) Excessive taxes on good lands, and a tendency for shrinkage in the taxpaying base to spread the infection of delinquency.

The last decade has seen a marked upward trend in delinquency, though with variations among States. Statistics on the extent of chronic delinquency are scattered and incomplete; nor is there a uniform basis of comparison between States. But it is possible to gather a strong impression from the data that are available for particular parts of the country. The data in some States actually cover chronic delinquency. In others, they cover only delinquency of a shorter-term character; but its extreme volume and concentration in areas of severe maladjustment indicates the existence or approach of large-scale chronic delinquency. The problem is thus one of dealing with an event which not only is already well developed but gives striking evidence of continuing in the future.

In northern Minnesota, Wisconsin, and Michigan, it has been estimated that approximately 20,000,000 acres have already either reverted because of nonpayment of taxes, or are headed in that direction. Chronically delinquent land amounts to 50 and 60 percent of the total area of some counties there. In 2 Ozark counties in northern Arkansas, land delinquent to some degree was recently estimated to be 33 to 42 percent of their respective areas. An analogous situation exists in the 15 Ozark counties of Missouri. Similarly, the apparent policy of some logging companies to "cut out and get out" in the timber and cut-over areas of the Pacific Northwest presages considerable tax reversion in this newer region of shortsighted forest use.

Many areas such as these once supported a large lumbering industry. But the salable timber and the logging companies are now gone, leaving behind desolate expanses where fire hazards menace neighboring timberland and communities. Often tax payment has ceased even before the stripping of timber is complete, in the certainty that there will be no interference by way of tax-enforcement action. Great gains could result from a land policy, backed by suitable legislation, that would bring these lands into public ownership for classification and appropriate disposal as soon as their owners had demonstrably abandoned them.

Tax delinquency reaches dramatic proportions in the Great Plains. Of the total taxable area of western South Dakota, almost two-fifths was tax-delinquent in 1938, two-thirds of this for 4 or more years. In addition, more than two-thirds of the taxable acreage of 14 southwestern counties of North Dakota was delinquent for taxes for 1 year or more in 1936, about 20 percent of this being for 5 years or more. Lands delinquent on current taxes,

plus county land already reverted, amounted to more than three-fourths of the taxable area of five counties there. Thirty-five percent of nearly 40,000,000 taxable acres of eastern Montana was delinquent for 1 year or more taxes in 1936. Counties held tax deed to more than 3,000,000 acres, with lands delinquent for so long a time that the 30 counties in that area could increase their holdings by 9,000,000 acres, if they took all tax deeds to which they might be entitled.

In this semiarid region where the system of dry-land cultivation stimulated by the World War and temporarily favorable weather has since widely broken down, wholesale farm abandonment has been accompanied in varying degrees by a return to livestock grazing. Much of the land is in absentee ownership, which does not always assure the owner control of, nor compensation for, the use of the land by non-owning residents. Similarly, the taxing jurisdictions have not usually been accustomed, or have found it impossible, to enforce tax collections stringently and exert control over lands eligible for tax title.[7]

Common practice among stockmen is to secure control only over key tracts of land containing the strategically located watering places, and to use freely all surrounding open lands, regardless of their legal status, and subject only to competition from other stockmen. This free and competitive use invariably leads to overgrazing and premature stocking in the spring before vegetation has had an opportunity to make much growth. Exhaustion of the range grasses and virtual ruin of millions of valuable acres are partially due to this. Before ranching operations can be stabilized, and the range so used and so managed as to conserve and develop its long-term grazing value, some means must be found for obtaining and exercising public control over lands abandoned to unrestricted exploitation.

[7] "Tax title" is used throughout this chapter to refer to the type of land title that is acquired by a tax deed or its equivalent. The "redemption period" is considered to be the time between a tax sale and the creation of a tax title during which the delinquent taxes, interest, and penalties may be paid to free the land from tax claims thereon.

Most States in other areas also offer illust tions of significant acreages of chronically d linquent lands, picturesquely referred to "blighted areas." For instance, approximat one-third of the poor-land pine area of south New Jersey was delinquent in 1936—afterma of land-speculation schemes and abandoned r estate subdivisions. In Pennsylvania, 120,(acres (or 4% percent) of the "unseated" (t developed and unoccupied) lands in a sin county were 5 or more years delinquent. recent survey in Mississippi showed that abo 1,700,000 acres had reverted to the State as consequence of over-long delinquency, pr cipally in the poor hill sections, the southe timber region, and the overcapitalized draina districts along the main rivers. In Orego a similar acreage had reverted by 1938, wi much more reversion expected.

Changed economic conditions may perha alter details of the foregoing picture. Nev theless, there remains a large and growi bulk of chronically delinquent rural lan whose legal status is muddled as a result of t complexities, uncertainties, costliness, and i dulgence of existing methods of tax collectio Whether completely abandoned, abused b anyone who chooses to exploit them, or expos to speculative activity, these lands are not r turning revenues to local governments, nor a they being protected and developed as a economic resource for the long-term benefit the people.

Present Practices Affecting Delinquent Lands

Present difficulties with tax-delinquent lands are due less to lack of competence or conscientiousness on the part of local tax officials than to a faulty system.

A positive policy would seek to—

(1) Reduce the probability of the return of certain types of chronic delinquency. This can be done through fairer assessment practices and through checking excessive costs of local government. It can be done through clear and sound tax-enforcement methods which will permit all property owners to know definitely when their

taxes should be paid and exactly what will happen in case of delay in payment.

(2) Clarify the legal title to delinquent lands which have run the redemption period, so as to make possible their classification for

(*a*) Return to full or restricted private ownership; or

(*b*) Public ownership and management.

But before any effective policy can be applied, many legal and administrative obstacles, now tolerated in the hope that somehow evils will automatically right themselves, must be cleared away. Tax-collection laws that are complicated, indefinite, and uncertain need to be made simple and understandable. Costly and cumbersome action to validate title must be made inexpensive and practicable.

In the course of its treatment of tax delinquency procedures this chapter concentrates on rural problems, although much of the analysis applies to urban situations as well. Where the shaping of suitable policies causes conflicts between rural and urban interests, it may be possible to write into the law different methods of treating properties lying respectively in rural and urban areas. Michigan, for example, has taken a step in the direction of distinguishing between rural and urban land, as well as between generally submarginal areas and more productive lands. Lands in the northern part of the State (usually submarginal for general farming) which have reverted to the State for nonpayment of taxes during the last few years, are administered by the Department of Conservation, whereas those in southern Michigan are administered by a State Land Office Board, whose purpose is to return lands to the tax rolls by sale of lands in its jurisdiction into private ownership. No land under the jurisdiction of the Department of Conservation need be put up for sale except on application of the delinquent former owner, who must make special application therefor within 30 days after the State takes title. At the end of that period the Department is free to make appropriate classifications in terms of suitable land use and consequent proper disposition. Other ways of distinguishing between the handling of rural and urban lands might well be devised to fit the needs of particular situations.

STAGES IN THE TAX CALENDAR PRIOR TO DELINQUENCY

Property-tax procedure is commonly governed by statutes in which each step is specifically set forth. Administration is almost completely a local, rather than a State, function—it is in the hands of the county, the township, or some other local unit.

The tax procedure before the final step in legal enforcement is taken normally covers: (1) Assessment; (2) assessment review and equalization; (3) setting of the tax levy and tax rates; (4) calculation and recording of the tax charges; (5) billing, or publication of due date, and the receiving of taxes; (6) procedures accompanying delinquency, including announcement when necessary, of delinquency date, penalties, and other conditions of late payment.

The process begins upon finding and identifying the land and giving it a valuation for tax purposes. In order to support the succeeding steps in the tax-enforcement procedure and the legality of any tax title which is finally taken, it is critically important that the property be accurately described from the start in assessment records. The courts of the various States do not agree on what is a sufficiently accurate description for tax purposes; but the general necessity for strict care on the part of tax officials is illustrated by some court decisions, particularly the older ones, where even minor deviations from absolute accuracy were fatal to the validity of a tax title even though no reasonably intelligent person would be misled by the slight errors causing the fatality.

The next stage in the tax procedure is the equalization and revision of assessments by boards of tax appeal or review, a function which as typically discharged does not fully serve its needful purpose of really leveling off inequities and discriminations. Normally, this step in tax procedure is not a major source of error, although instances have occurred when lack of proper notice, failure to keep adequate records, and

the like, have prevented the completion of subsequent steps in the procedure.

The process of making the tax levies and setting the tax rates of the taxing jurisdictions must usually follow a sequence dictated by statute and conform with tax-rate limitations. These limitations are frequently numerous and complex; and the legality of the levy or rate may be challenged if they are exceeded.

The tax rates and tax levies having been determined and approved, taxes are computed against the valuations of each parcel on the tax roll. This is primarily a clerical process, but here again errors in computation or in listing the property in its correct class may, in many States, form the basis of a lawsuit attacking the tax title.

In many States, the tax levies of all units are consolidated and only one "bill" incorporating the total amount due is issued against any one parcel of land. This system is usually considered more desirable than one in which the levy of each unit is handled separately—in that it reduces record complications, avoids some procedural errors, and may help to prevent legal confusion resulting from large numbers of tax title claims.

The statutes of some States direct the tax collector to send tax notices or bills to the property owners, whereas in others it is apparently assumed that the taxpayer can discover for himself the amount he owes, since the collector is required merely to publish or post notice that taxes are due. Although it is, of course, good business to bill each taxpayer, statutes requiring notices will prove to be a source of defective tax titles unless it is further provided that a failure to notify will not affect the validity of the tax procedure. This is true because it is not always possible to keep an accurate up-to-date record of the names and addresses of absentee owners, especially in poor land areas where abandonment often occurs. Hence, making reversion of delinquent lands dependent upon proper notification perpetuates a fertile source of trouble.

Writers on tax problems often discuss the way in which taxes may be paid. To ease the taxpayer's burden of having to make one lump-sum payment at a fixed date, systems of installment paying and of prepayments have been advocated. Practicable systems of this sort can be devised and have been successfully applied in various localities. But generally such incidentals as the manner of payment have more of a moderating effect on short-term than on long-term delinquency. In any case, systems of installment payments and prepayments in rural jurisdictions should be so devised as to avoid elaborate bookkeeping which may result in high costs and procedural errors.

An item mainly of interest for short-term rather than chronic delinquency is the date when taxes become due and delinquent. Unless this falls at a time when the farmers are likely to have ready cash, considerable inconvenience to individuals and collecting officials is likely. Also, procedural confusion sometimes arises out of the failure of some States to provide a fixed date on which taxes become due and payable. In these the due date is indefinite and made conditional upon the completion of certain preceding steps, such as the tax collector's receiving the tax roll or the collector's giving notice that taxes are due.

To encourage prompt payment of taxes, all States provide for penalties if payment is not forthcoming upon or before the prescribed date. These penalties may be a flat rate on the amount of delinquency, an interest charge beginning with delinquency date, or a combination of the two. The penalties against tardy taxpayers are primarily important in respect to fiscal affairs rather than chronic delinquency, although penalties which are excessive may mean the difference between payment and nonpayment. The best practice is generally thought to be a moderate flat-rate penalty of 6 to 10 percent plus annual interest of 8 or 9 percent. That is, rates should be sufficiently high to cover administrative costs entailed by delinquency and to discourage taxpayers from using delinquency as a substitute for commercial loans, but not so high as to put undue obstacles in the way of property owners who are willing to pay but are temporarily short of funds.

When the final due date has passed without payment, taxes become "delinquent" and the taxing jurisdictions must seek to enforce payment. Real-property taxes constitute a lien or "debt" against the land; accordingly, the customary means of enforcing collection is to sell the land, in order to wipe out this debt.[8] Before discussing this general method, a few other possible tax-enforcement methods may be mentioned.

A few States make real estate taxes a personal liability, so that a delinquent taxpayer may be sued just as though he had executed a promissory note. This method of collection is seldom used, however, since the judgment obtained by the collector is not a prior lien on the taxpayer's property. It is secondary to any other liens previously created. Thus, proceeds from a sale of the taxpayer's possessions in satisfaction of the judgment must be used to pay all prior liens before they can be applied to discharging the tax obligation. Furthermore, since the taxpayer is also entitled to the benefit of statutes exempting his homestead and certain basic personal property from being sold to satisfy the judgment, this means of collection is effective only against persons in good financial condition.

Statutes in many States also provide, as a supplementary or alternative method, that personal property may be seized and sold for real estate taxes. Some go further, by requiring the collector to seek to satisfy the tax debt by seizing and selling the taxpayer's personal property before resorting to the usual device of selling the land against which the taxes have accrued. Thus a tax title may be invalidated if the collector has failed to search out personal property which can be sold. Although it is desirable that all reasonable means of enforcing the tax collection should be available, the law merely obstructs and confuses the enforcement process if it makes the validity of tax title contingent upon the exhaustion of alternative methods before the land itself may be sold.

As said above, sale of the land is the principal method of enforcement. The "delinquency period"—the period between the date taxes are due and the date the delinquent land may be put up for sale—varies among the States, and in some cases is indefinite. But at some point of time after due date, the taxing unit may seek to satisfy the unpaid taxes by selling the land against which the levy was made, usually subject to the owner's right to redeem.

Sales are at public auction to the "best" bidder, although methods of bidding vary. The sale may be (a) to the highest cash bidder who will pay at least the amount due, as in Ohio. It may be (b) to the person who will pay the amount due and accept the lowest penalty payment in the event of redemption, as in Illinois. Or it may be (c) to the person who is willing to accept the least fraction of the entire delinquent tract, as in Mississippi. Under the third system, if the tax collector mistakenly offers the entire tract for sale without first offering a part of it, the courts may hold the sale invalid. The first two are thus generally considered more desirable than the third, since they give rise to fewer possibilities of invalidation as a result of careless procedure or inaccurate descriptions, and do not break up farm units if redemption does not occur.

If no one bids the amount due, or no bids are made at all, the land is "struck off" to the county or State. It is then usually proffered for sale in each succeeding year until sold, redeemed, or finally deeded to the county or State. But some States have laws permitting lands to be sold for whatever they will bring after they have failed to sell at a certain number of tax sales, even at a price considerably less than the taxes due. In Missouri, if no bids are received on a tract for two consecutive years, it may be offered the third year for any amount. Since many taxpayers took advantage of the virtual disappearance of tax purchasers and permitted their taxes to go delinquent, knowing that they could reclaim their property by bidding it in for a trivial sum the third year, the legislature

[8] In this report no distinction is drawn between sales of the "land" and sales of a "lien" or "certificate." All kinds of tax sales are referred to as "sales of the land" or simply as "tax sales" since, regardless of the technical nature of the thing sold, a private purchaser at a sale will sooner or later receive a tax deed if the tax "debtor" does not pay the delinquent taxes.

in 1939 sought to supply safeguards by a provision that if the "real purchaser" at the tax sale is the delinquent taxpayer, no tax deed will be issued until the full amount of all delinquent taxes, penalties, interests and costs are paid. In addition, provision has been made for a county trustee to bid and buy at third sales whenever necessary to protect the taxing unit from losses due to inadequate bids.

Practically all States provide for a redemption period following the tax sale, varying from 1 to 5 years, during which anyone having an interest in the land, such as owners, cotenants, mortgagees, and other lien holders, may redeem it upon payment of delinquent taxes, penalties, interest, and costs. The redemption period for land sold to a purchaser at a tax sale is a fixed period in all States, but in some the period is indefinite if no one purchases at the sale and the property is "forfeited" or "struck off" to the county or State. In several States, as in Louisiana, Montana, and North Dakota, redemption can be made even after a tax deed has been issued, so long as the State or county has retained title—a practice which of course hampers any policy of public-land management.

The most desirable length of the redemption period commonly suggested is 2 or 3 years. Authorities do not favor long redemption periods. A 2-year period is considered sufficient by many, but a 3-year period is perhaps most frequently recommended. Periods of moderate duration are recommended on the theory that such periods are long enough to allow for recovery from abnormal financial conditions not resulting from imprudent management. If lands are not redeemed within this time, they are not likely to be redeemed at all.

Special privileges are commonly granted to minors, idiots, the insane, and sometimes to persons absent from the country—in that their right to redemption is generally extended to within one year after their disability has been removed. This consideration is given because it has been felt to be unfair to seize the property of such persons while they are laboring under disability. Statistics are not available to show how often these special privileges are actually invoked, but it is believed to be very rarely. But the possibility contributes to the weakness of tax titles, for a prospective purchaser of such tax-delinquent land could buy only subject to the risk of later redemption, even long after the normal redemption period has expired, unless he undertakes the costly process of quieting title.

Many States require local taxing jurisdictions as well as private purchasers at tax sales, to give notice of expiration of the redemption period to persons interested in the land before they may obtain a tax deed. The purpose is to afford owners and other interested parties a last opportunity to pay taxes and save their land. But it is within legislative power to do away with such notices entirely, for (except in Illinois and Nebraska) they are a matter of privilege and not of constitutional right.

The particular requirement for such notice varies among the States. In Illinois, for example, the notices must be personally served on persons occupying the land, on the person in whose name the land was taxed, and on the owners and parties interested in the land, including mortgagees or trustees of records, when they can be found within the county. Under certain circumstances notices must also be published. Since courts emphasize that these statutes must be closely observed, requirements of this sort are another source of insecure tax titles the number of such court cases suggests that failure to observe them is not uncommon. Particular consideration might be given to relaxing strict provisions of this type in their application to tax deeds taken by a State, county, or other taxing jurisdiction.

The final step in the process, when delinquent land has neither been disposed of at a tax sale nor redeemed, is the issuance of a tax deed to the county, State, or other taxing jurisdiction. This practice is not universal, since in a few States no taxing unit receives a deed, no matter how many times the property has been ineffectually offered at tax sale. Yet without possession of some sort of title, no public body can take steps to meet the problem of orderly management or disposal of chronically tax-delinquent lands.

CONCESSIONS

During the last decade, State legislatures have habitually granted various concessions to property owners, such as postponements of sales dates, various compromises, and retroactive reductions in penalties and interest. These concessions have often been made because of depressed economic conditions and have been inspired by the best of motives. Nevertheless, their widespread and habitual use has had a demoralizing effect upon local revenue systems; financially able owners have used measures intended for the benefit of really hard-pressed owners as excuses for tax avoidance.

Tax compromises, in place of more stringent enforcement after a period of delinquency, have even become established practice in some States. In Missouri, a recent study showed that compromises commonly apply to "wild lands" which were not being developed under present ownership. This has encouraged speculative activities, and postponement of the inauguration of an effective policy of socially profitable land development. In some instances, the making of concessions goes to the extent of outright abolishment of back taxes, as in the case of certain promotional subdivision schemes on poor and undeveloped land in the Ozarks. Because of the high cost of notice, advertising, etc., a county has sometimes found it less costly to abate taxes in late stages of delinquency than to attempt to collect them. A less clumsy and less expensive collection system would make possible either the restoration of properties to the tax rolls, or the establishment of another type of ownership more favorable to productive development.

TECHNIQUES OF ADMINISTRATION

The orderly handling of tax enforcement and of tax-reverted lands is not solely a question of law. It is a problem of both public administration and law. Successful and forward-looking revisions in tax methods require, on the one hand, general improvements in public administrative customs, and on the other, such statutory changes as will render possible and practicable the observation of legal requirements by careful public officials.

The procedures required by law are scattered in so many separate statutes and are so involved that the officials who administer them have frequently not succeeded in following them faithfully. In answer to a questionnaire on the operation of the tax law in one State, many local collectors confessed the uncertainty of their understanding, and others asked advice as to what the law meant. One student, who took the trouble to make a count for his State, found that 150 small processes had to be followed from the time assessments were made until tax title was finally to be taken. The courts, interpreting the requirements of these multitudinous steps, normally hold tax officials to strict accountability. One slight lapse or misstep, seemingly unimportant to laymen, may make the whole procedure invalid. It is not surprising, therefore, that tax titles are generally viewed with deep suspicion.

Efficient administrative organization and practices in the process of property assessment are vital to the tax-enforcement system. Assessment is in some places handled by several different and overlapping subdivisions of government, with consequent assessment confusion. In others, the assessing area may be so small as to preclude the establishment of an efficient or technically sound system. Land records and descriptions may not be kept accurate and up-to-date, which is an item of special importance. A common practice under township assessment and sometimes under county systems, is to copy the records of previous years and to "pick up" new or unlisted properties when inquiry is made as to taxes due. Old errors are continued as new ones are added.

In many States assessment is really self-assessment, whether or not contemplated by law—that is, individual landowners virtually set their own valuations without any objective interposition by public assessors. Much property may escape notice altogether and other parcels (87 percent in one instance) may be so badly described as to endanger the whole collection process.

A portion—perhaps a very large portion in some areas—of chronic tax delinquency may be due to gross overassessment of low-valued land

in comparison with land of better quality. As a consequence, such land may bear too great a share of the tax burden. Some authorities believe that this is the one point where the most productive improvements could be made in the administration of the real property tax system. Its importance should not be judged by the brevity of its treatment here, since the scope of this chapter permits only brief mention of the problem.

Virtually all authorities agree that administrative improvements which should be considered include: (1) The transfer of assessing functions to a governmental area large enough to warrant the full time of a well-paid and technically qualified assessing official; (2) the use of competent centralized assessment for equalization of assessments among local assessing units of government; and (3) organized and effective State supervision over the local assessment process and the records associated with the tax collection system by a State Tax Commission or equivalent authority. It has even been proposed that the whole assessing system be completely reorganized under a State authority with a professional staff. The State and local governments should not fear that such measures would mean usurpation of local self-government by the State, because the making of assessments is a technical process which does not, and should not, involve policy decisions on the part of assessing officials.

Central collection of taxes is preferable to a system in which many small units collect separate levies in a given area. It reduces the complications of separate records, is more convenient for the taxpayer, saves administrative expenses, reduces the possibility of procedural errors, and makes more likely a well-operated system. Tax collection by full-time salaried officials has been found considerably more effective than collection by large numbers of part-time collectors working on a fee basis.

Grouping of all tax levies in a given local area and handling them as a unit in current collection and subsequent enforcement would also help reduce legal complications which may arise when two or more separate taxing districts in the same area each carry on the assessment, levying, and collection of taxes on the same property. Each may operate in complete disregard of the others, with the result that no one may be able to foreclose tax liens and obtain good title. There is clearly an advantage in consolidating all liens in a single enforcement procedure in such instances.

Measures to Simplify Procedures and Reduce Costs

Various measures are under consideration to improve tax procedure.

Are Tax Sales Necessary?

It is debatable whether the ordinary "tax sale," which is held soon after due date and is followed by a redemption period, is a feature worth retaining with its present conditions and timing. It has been proposed that it be abolished, in favor of a system under which the sale would be held several years after the first delinquency and without "after-sale" privileges of redemption. (The Ohio procedure is of this type.) Taxpayers would continue to enjoy an ample period of grace during which they could reclaim their property by paying up delinquent taxes and penalties. This would correspond to the present redemption period, except that it would run before—not after—a sale occurred.

The proposed system would reduce costs and administrative worries, for fewer tracts would have to be offered for sale fewer times, and less bookkeeping would be needed. Redemptions during the grace period would make it unnecessary to offer some or many tracts; and other tracts which are not usually attractive to private purchasers would not have to be repeatedly re-offered. Moreover local governments would gain by receiving the penalties which now often accrue to tax purchasers; and delinquent taxpayers who redeemed would also benefit because they would not have to bear the costs incurred in offering their property for sale.

The most important advantage, however, is that such a system lends itself to the proposal made in chapter 8 that tax-reverted lands be classified as to their use suitability before being offered for sale to private citizens. If, following the "period of grace," title to all remaining delinquent lands were automatically taken over by the public, without permitting private per-

sons to bid, a public agency could classify them and then take appropriate steps to dispose of them. This suggestion is not entirely new. In Oregon, California, Idaho, and Utah, all tax delinquent lands are now "sold" (or "struck off") to a taxing unit (State or county), without being offered to private bidders.

The arguable disadvantage in postponing sale so long after delinquency first occurs, is that the delay might interfere with the performance of the two main purposes of the present tax sale: (1) To encourage payment of taxes and (2) to provide means for raising immediate cash revenue to supplant funds lost as a consequence of tax delinquency. But it is doubtful whether the tax sale now effectively serves either of these purposes.

In numerous localities, during recent years, the sale has provided little or no incentive to the payment of delinquent taxes. This has been because of a lack of purchasers, the existence of a redemption period following sale, or legislative concessions to delinquent taxpayers, or other reasons. In some areas, of course, the threat of sale may still have some effect; but it is probable that another device, such as fixing a sufficient money penalty for delinquent payments, would produce the same result.

In "normal times" redemptions are usually about as great as current delinquencies in good land areas so that there is little need for an immediate sale to provide revenue to replace that lost due to delinquencies. This cannot be said of poor areas, where even in normal times the volume of tax delinquency continues its unhealthy growth. But even though these areas do need immediate revenue to offset tax delinquency, the tax sale fails to provide it because prospective purchasers are more interested in redemption penalties than in the land and generally refuse to bid except for tracts they think are going to be redeemed. Even in these areas then, a tax system that postponed the sale would probably provide as much revenue from redemptions as could be obtained from the earlier sale procedure.

Losses in immediate revenue suffered during a transition period by reason of abandonment of the tax sale, could be made up by short-term borrowing. Costs involved could be covered through interest or penalties collected at the time of redemption, or through use or sale of the forfeited lands.

In periods of depression, when delinquency is highest and local governments are in greatest need of funds, the number of private bidders at tax sales drops sharply in both good- and poor-land areas, sometimes to such an extent that the tax sale produces practically no revenue. If, therefore, as much revenue can be obtained from redemptions under a system providing for a postponed sale during normal times as from a system providing for an earlier sale, and, if the earlier sale fails to bring in immediate revenue during times of depression, there is no very substantial reason why the sale should not be held at a later date in order to gain the advantages that accompany a late sale.

JUDICIAL FORECLOSURE OF THE TAX LIEN

If the tax officials have strictly followed all applicable provisions of the statutes, a tax deed issued for nonpayment of taxes would be valid and would convey a clear title. Mistakes and failures to apply laws as complicated as our property tax statutes, however, are practically unavoidable. Since depriving a man of his property is a harsh action, the courts have insisted that administering officers observe statutory details exactly. Failure to follow the letter of the law consequently makes ineffective the procedural step at which the mistake occurs; and such invalidity at any essential step will, of course, invalidate a tax title.

Under present conditions, missteps are so numerous that a high percentage of tax deeds lack force. A purchaser of land whose title depends upon the validity of a tax deed cannot know, without a costly investigation, whether his deed is or is not one of the few sound ones. Buyers are customarily suspicious of all tax deeds until their value is established.

Since the judgment of a court of adequate jurisdiction, confirming the validity of a tax title, is accepted as settling all doubt, it has frequently been suggested that States follow the practice of enforcing delinquent collections by means of a judicial action. The taxpayer could then appear

in court and protect his property against unlawful seizure. Some States now have laws providing for a court hearing before tax-delinquent lands can be sold. But even here statutory qualifications and court interpretations have frequently robbed the proceedings of their full effectiveness, so that tax titles continue to remain weak. These statutes could be amended, however, and made more effective.

Of the available forms of adequate judicial action, the in rem action to foreclose tax liens offers most advantages. Briefly stated, an in rem action is directed against the land itself rather than against the person. (Taxing jurisdictions in the poorer rural counties simply cannot afford the in personam action with its elaborate researches, notices, and costs for each individual parcel, which many municipalities have advantageously used to foreclose on relatively high-value delinquent city properties.) The in rem action, particularly when coupled with the "blanketing" of a multiplicity of delinquent tracts into a single proceeding, offers especial possibilities for the poorer rural counties where low-value, abandoned, tax-delinquent land abounds. Michigan has used this type of procedure with good results since 1893. Both Oregon and New York adopted statutes embodying its principles in 1939.

An in rem judicial action might be begun every year by a certain taxing unit, such as a State or county, to foreclose liens for delinquent taxes on behalf of all taxing units. All lands delinquent within each county could be joined in a single "blanket" action, in order to lower costs. The action could be begun at the expiration of a "period of grace," such as suggested above, or sooner if desired. In either case, the essential parts of the action would consist of: (1) Notice to landowners and other interested parties, (2) hearing before the court, (3) judgment, and (4) sale. The sale might automatically transfer all lands to the State or county pending decision as to their final disposition.

One of the most important elements of a foreclosure action is the giving of notice to persons having an interest in the land that action has been started, since proper notification is essential to enable the court to pronounce a binding judgment. There is no question but that a court has adequate jurisdiction to adjudge the rights of anyone who is served personally with notice, even though he ignore the notice and not appear in court. In many cases, however, particularly in tax-collection actions, it is impracticable to serve personal notices on everyone interested, for the reason that some may be unknown or impossible to find; and in the collection of taxes on low-value lands, the costs of service and title search to find all interested parties would often exceed the value of the property. It is therefore generally considered desirable in tax-collection actions that the notice be as simple and inexpensive as may be consistent with constitutional requirements of due process.

The absolute minimum notice that meets constitutional requirements is not entirely certain, but it is well established that no personal service is required in an in rem action. It is sufficient to publish a notice which describes the lands and informs all "interested persons," without naming them, of the court action. This notice, generally speaking, should be published several times to make sure, so far as possible, that it comes to the attention of everyone interested. Publications are usually spaced a week apart. By a 1935 statute, Michigan attempted to dispense with the publishing of land descriptions in the notice and required merely a short statement that a list of the lands affected could be inspected at the county treasurer's office; but this statute was declared unconstitutional by the State Supreme Court. The New York legislature in 1939 provided for much the same sort of notice, with the addition that warning of the action must also be mailed to the landowner. The difference between the two procedures may be sufficient to establish the constitutionality of the New York statute. If the law is upheld, this inexpensive means of giving notice may prove of value to other States.

Following notice of action to foreclose the tax lien, any landowner, mortgagee, or other person interested is privileged to file an answer and ask for a separate hearing before the court with respect to his tract of land. Usually, the issues raised by his answer would not require that action be stopped on the remaining lands,

although it might under some circumstances, as in cases where the legality of an entire tax levy were involved. Discretion to decide whether the main action should be suspended pending the disposition of the separate hearing could, of course, be placed with the judge.

At the hearing, whether in the main action or in a separate one, the delinquent tax list prepared by the tax collector would be prima facie evidence of the amount due on each tract of land, as well as of the observance of all of the statutory requirements. The owner, if he chose to appear, would be allowed to make a defense indicating that no tax lien existed against his land or that the amount shown on the books was not correct; and the court would determine his rights. If no one defended the action for certain tracts of land, and the court found that a prima facie case against the lands was established by the collector, judgment would be rendered on behalf of the taxing unit, ordering the lands to be sold in satisfaction of the tax debt.

The sale following an in rem judicial action to satisfy the tax debt does not require further discussion, except to note that if lands are offered to private bidders at an advertised sale, the sale proceedings should be reviewed and confirmed by the court to assure that they were properly carried out. On the other hand, if, as recommended, all lands are "sold" to the county or State which is merely a bookkeeping transaction confirmation may not be required.

The laws of several States provide for judicial actions of one form or another which do not result in sound titles. But their legislative and judicial histories are frequently rich with information that will guide the shaping of a new statute seeking to avoid the failings of the old.

Under suitable statutes, if any person interested in tax-delinquent lands fails to appear in court and contest the action, he generally cannot complain thereafter against the sale of the land on any ground that he might have raised in the judicial action. He has had his chance to be heard, and a failure to take advantage of it prevents him from complaining thereafter. There are a few exceptions, but they occur only under such unusual circumstances that they are of slight practical importance. In many States, however, existing laws governing judicial actions in tax procedures permit many barrable complaints to be raised later in suits attacking tax titles.

PROTECTION OF HOLDERS OF INVALID TAX TITLES

Many points at which mistakes affecting the validity of tax titles can be made have been mentioned. Several legal devices, aside from judicial proceedings, have been perfected to secure at least partial protection against their effect. These include curative acts, statutes of limitation, and laws requiring persons who successfully attack a tax title to pay back taxes and the value of unexhausted improvements constructed by the tax titleholder. Although the protection offered by them is in no case complete it is nevertheless substantial. By discouraging lawsuits to break tax title, or otherwise limiting the conditions under which attacks on tax title can be made, these devices serve to improve the marketability of tax titles and at the same time to lay the basis for effective land policy.

A curative act is one providing that certain mistakes or defects occurring in the taxation process will not affect the validity of a tax sale or a tax deed. The type of defect that can be avoided by curative acts is restricted by limitations of the Federal and State Constitutions to "informalities and irregularities" that is, matters of minor practical importance such as clerical errors, failure to deliver the tax books to the collector within the prescribed time, or failure to verify the delinquent list, and so on. The reason for restricting the scope of curative acts is that their operation is retroactive; and consequently, to give them broader effect would deprive landowners of substantial vested rights. Defects so vital in character as to be beyond the retrospective reach of a curative act are called "jurisdictional." Jurisdictional defects are so basic that it is impossible to cure them retroactively. They include such things as erroneous descriptions of the land, or failure to give the taxpayer notice of his assessment and a chance to protest it, and the like.

Statutes of limitation place definite time limits within which objectors are privileged to be heard, or to be forever barred from questioning the tax title. Their underlying theory is that if a landowner knows, or should know, that a tax deed to his land has been issued to another and he does nothing to test its validity within a reasonable period of time, it may be assumed that he feels the tax deed to be valid; and accordingly the tax deed is conclusively presumed to be valid. The public interest, moreover, requires that uncertainty in land ownership be avoided, and that questions of title be settled without delay. Statutes of limitations thus go much further than curative acts; but because of a lack of unanimity in court decisions it is impossible to say just how they affect jurisdictional defects.

Court interpretations of statutes of limitation vary from State to State and often reveal a considerable degree of judicial confusion. Several courts have, for example, failed to recognize the distinction between curative acts and statutes of limitation, and have construed the latter as though they were the former. Strained construction of the language of the statutes has been frequent. Nevertheless, four basic constitutional principles concerning statutes of limitations in tax-title matters are apparent: (1) There must be some actual or constructive knowledge by the landowner of the opposing claim of the tax title; (2) the landowner must be given a reasonable period within which to attack the tax title; (3) the owner must have available a real remedy to attack the tax title and to establish his rights during the running of the limitation period; and (4) as long as the delinquent taxpayer retains physical possession of the property, a statute of limitation cannot affect his rights.

The requirement that there be some actual or constructive notice is ordinarily satisfied by the recording of the tax deed, although other methods might also be adequate if provided by law. As for what constitutes a reasonable period, the United States Supreme Court has held that 6 months is not unreasonable, but most States provide a longer time. The requirement that the landowner possess a remedy during the running of the period is particularly important in connection with tax titles acquired by States, since a State is sovereign and hence cannot be sued without its consent by a private individual. Legislatures, except those of Alabama, Arkansas, Illinois, and West Virginia, are constitutionally free to grant State consent to be sued.

Court decisions indicate that other considerations apply to the statute of limitations, but it cannot always be said whether these decisions are based on constitutional or upon statutory requirements. Laws providing a limitation period that begins after the tax titleholder has entered into physical possession give more effective protection than those under which the limitation period runs while the tax titleholder is in only constructive possession. Moreover, statutes of limitation have also been held ineffective by some courts when the invalidity of the tax deed in question would be obvious on its face, or if the land were erroneously described in the tax assessment and collection proceedings, or if the taxes were actually paid and never delinquent in fact, or if no taxes actually were levied against the property.

Although many of these decisions were handed down years ago, they still might be followed today. At least they cast some doubt on the complete effectiveness of statutes of limitations as a protective device. Michigan, however, by utilizing both the blanket in rem judicial action and the statute of limitations has secured adequate State tax titles.

Many lawsuits seeking to break tax titles could be discouraged by laws which required the attacking party to pay the tax titleholders the value of any unexhausted improvements that may have been placed on the land since the date of the tax deed. Laws of this type have been enacted in Indiana and Ohio to prevent attacks on tax titles held by the State; and Arkansas has a similar statute protecting all tax titleholders. Further protection is afforded the title if the successful attacker is also required to pay all back taxes, penalties and interest for each year from the first delinquency to the time the tax deed is held invalid. In Minnesota, this sum must be delivered to the court by

the attacking party when he commences suit. If he is unsuccessful, the money is returned to him at the termination of the suit, but is paid to the proper party if he recovers the land. Such measures in many instances, would afford a practical method of protecting tax titles in areas of low-value land.

CONSTITUTIONAL CONSIDERATIONS

Any modification of tax-collection statutes must, of course, conform to constitutional requirements. At various points above, particular constitutional problems have been discussed; but there are a few others which also merit mention.

An important question is whether, under constitutional provisions, the law in force at the time of the tax sale must govern subsequent procedures or may be changed by the legislatures. Chronically delinquent lands constitute an immediate problem, but adequate legislation designed to expedite solutions to this problem cannot be adopted unless legislatures are free to abandon existing procedures where necessary and to develop new ones in their stead. With the possible exception of a few States, it is believed that legislative authority is ample for this purpose. Most courts hold that, while the rights of a landowner whose land is sold to a private purchaser at a tax sale are fixed by the then existing law, this is not true when the lands fail to sell and are struck off to the State or county. According to these decisions, the States are free to provide new procedures for lands which have not been sold to private buyers.

Certain constitutional requirements prevent arbitrary action by legislatures, and may bar shortening the redemption period or imposing more onerous conditions of redemption. But it seems probable that requirements for notices of expiration of the time of redemption could be greatly simplified and that a judicial action could be used to foreclose a taxpayer's interest in delinquent property as suggested above, if a legislature so desired.

State Land Purchase for Land Use Adjustment

PUBLIC BODIES choosing among available measures for improving land use are in a position to make certain clear-cut comparisons. Can the job be done by regulating the use and occupancy of the land through devices such as land use regulations, zoning, and restrictive covenants, or does the situation require public management following purchase? What are the long-term costs under the two types of devices; do the subsidies now extended by public bodies exceed the cost of acquisition? What are the benefits under the two methods in terms of individual and general welfare? Cases where desired ends can be obtained through zoning are discussed in chapter 1; cases where land use regulations are adequate, in chapter 3. The following paragraphs cite instances where public acquisition, either as a supplement to or a substitute for regulatory action, promises most for good land use.

SITUATIONS IN WHICH STATE LAND PURCHASE IS DESIRABLE

State and local acquisition seems desirable in the case of lands where public acquisition would: (1) Supplement zoning in eliminating excessive governmental costs for services rendered to isolated settlers; (2) supplement land use regulations on lands where the regulations are inapplicable; (3) control hazards to the public health and safety and to adjoining property; (4) restore lands from idleness and depletion to productive uses yielding revenue to local communities; and (5) facilitate proper use of State or county lands which have been obtained through tax reversion or foreclosure or in other ways but not acquired for some specific purpose.

TO SUPPLEMENT ZONING IN THE ELIMINATION OF EXCESSIVE GOVERNMENT COSTS

Lands that need to be acquired by the public in order to eliminate excessive governmental costs are ordinarily occupied lands located in sparsely settled areas unsuitable for settlement. As indicated in chapter 1, occupancy of isolated farms in such areas frequently results in unduly high costs per family in furnishing public services and facilities such as roads, schools, and relief. In a number of cases, the occupied property could be acquired at a price equivalent to the expense of maintaining the roads and transporting the children to school for 1 or 2 years.

Zoning enabling acts normally do not provide for the elimination of nonconforming users of the land. To do so might violate State and Federal constitutions. Settlers who are currently causing excessive public expenditures for public services can therefore continue to require these services after an area has been zoned.

Some of these settlers will leave later. Where the family that moves is the only one requiring certain facilities, its going eliminates their cost. But if the family that moves has been using public facilities in conjunction with a few other

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isolated settlers, the total cost of furnishing public services and facilities will not be reduced by its going; the per capita cost will be increased. Only after all of the isolated families using a particular road or school have been relocated are significant economies realized. An acquisition and settlement program through which movement from the area can be accomplished as rapidly as the people become willing to move therefore greatly strengthens a zoning program. Acquisition, by enabling the settler to realize on his equity, assists him in locating elsewhere.

In dealing with this problem, the first step should be to prevent further settlement on isolated farms by zoning areas unsuited for agricultural purposes against further settlement and by retention in public ownership of lands which have reverted through tax delinquency. The second step is to correct the existing situations. Where State aid for roads, schools, and other public services and facilities is supplied to local governments, the State as well as the local governments has an interest in the development of a program for the solution of the problem. Acquisition of the occupied and isolated farms which occasion the high costs for roads, schools, etc., thus assisting the families to relocate in established communities, seems to be the most effective way of meeting the problems presented by individual cases. A program involving the acquisition of such isolated farms, jointly planned and carried out by the State and local governments in cooperation with local groups, is a practical means of effecting economies in the cost of rendering public services and supplying public facilities.

Aside from savings in the cost of public services, there are other reasons for an acquisition program to accomplish the relocation of nonconforming users. Isolation breeds temptation to break game laws. Isolated farms in a forest zone may be a fire menace. Many isolated settlers are on submarginal land and require public relief of one kind or another. Savings in public relief alone would, in many instances, justify the cost of acquiring these holdings. The fewer the nonconforming users, the easier a zoning ordinance is to administer.

TO SUPPLEMENT LAND USE REGULATIONS WHERE REGULATIONS ARE UNSUITABLE

In many instances, land use regulations will accomplish all that is necessary for good land use. But in other cases they are for economic or constitutional reasons unsuited to the problem at hand. The following example may be cited as a case where land use regulations would be ineffective or difficult to apply, whereas acquisition of the land, assistance in the relocation of the family, and reforestation of the land by a public agency could accomplish the desired result.

A farmer within a soil conservation district in the southeast is living on a small tract of hilly land. He and his family are largely dependent upon the income derived from the small, steep, cultivated fields. The land all classifies as too steep to remain in cultivation even with complex soil erosion-control practices; the bulk of it should be planted to trees. Erosion at present is severe; the silt is doing damage to good bottom lands by depositing infertile debris on these lands and by raising a stream channel and thus reducing natural drainage. There is little doubt but that further cultivation on this tract should be stopped. But the limited resources of the operator who is also the owner, make land use regulations difficult, if not impossible, to enforce. The farmer cannot pay for the planting of trees which the regulations require, nor wait for returns from the planting. To eke out even a meager existence, he must continue to cultivate the land.

If he continues in this fashion, and the land use regulations are not enforced, the time will come when he will no longer be able to produce a crop, will cease to pay his taxes, and will finally abandon his farm. Eventually, the land will revert to the county by the tax-delinquency route. But this will take years, and in the meantime, bottom lands many times more valuable than his whole tract will have been ruined or severely damaged. This loss of both soil and human resources could be prevented by the purchase of land and the relocation of the family on more suitable land. The payment received by the farmer for his poor land could be used as a down payment on his new farm.

Comparable instances might be cited from lands suitable only for grazing as well as areas suitable only for forestry. The end point under such circumstances is public ownership of the land but in the interval much damage to soil and people will have taken place. Through public acquisition at an earlier point, prevention of further severe erosion and relocation of the families can prevent losses in productivity and value of both the lands in question and other lands that they affect.

TO CONTROL HAZARDS TO PUBLIC HEALTH AND SAFETY

Individual practices on certain types of land in some localities are hazardous to the public health and safety and to adjoining property. Serious wind erosion areas, lands used in a way that menaces public water supplies, lands with excessive surface water run-off creating flood hazards, and lands that are major sources of silt and erosion debris in irrigation systems and stream channels sometimes need to be acquired outright in order to insure proper land use.

Where stabilization of shifting sands, which are destroying adjacent farm land, buildings and other types of property, cannot be brought about through cooperation with the owner of the land causing the damage, it would seem appropriate that the local or State government acquire the land in order to effect control. Several areas on the eastern shore of Lake Michigan and on the Pacific coast in the State of Washington present such local problems of shifting sand dunes. Unless action is taken to stabilize such lands, they may prove an increasing hazard to adjoining property.

No quantitative figures can be given on the use of lands in a way that menaces public water supplies, but there is a general trend in the East toward land acquisition to bring about safer and more adequate municipal water supplies. Land has been so acquired within the watersheds from which Asheville, North Carolina, Boston, Massachusetts, and New York City derive their water supplies. The Public Health Services of Vermont and New Hampshire are advocating that communities acquire land necessary to secure the safe water supplies essential to full realization of community income from the important tourist trade in this section of the country.

Each year many small villages and farm lands suffer considerable damage from flash floods on small streams which pass through them. The watershed causing the damage may be small, and not a part of a larger flood-control problem the solution of which would come within the purview of the Federal Flood Control Act. The cost may be within the means of the local community. In many instances, damage can be almost entirely eliminated by State and community action at a fraction of the accumulated cost of uncontrolled floods over a decade. Application of soil and water conservation practices in the contributing watershed, installation of flood-control structures, and control of land use in flood plains may do all that is required. But in some cases, it may be necessary to buy some of the land on which soil and water conservation practices are to be applied in order to prevent uses inconsistent with the solution of the problem.

These small strategic areas must be carefully controlled in order to permit the maximum effectiveness of flood-control structures. The lands when acquired can usually be devoted to community or county forests or other beneficial uses. Where flood-control structures are installed, it will be necessary to purchase the land or flowage rights for the area to be inundated during periods of excessive surface water. If flood control is to be the sole public purpose of structures installed, the choice between acquiring title to the land or flowage rights is purely a matter of economy. Where the structure is to serve a multiple purpose, such as water storage or recreation in addition to flood control, acquisition of title to the land is usually preferred.

Not infrequently a very localized area is the source of most of the debris that settles in an irrigation channel. Ways of correcting the situation are to (1) build a water-spreading device at the local area, or (2) revegetate the area and exercise stringent control over its use. In cases where these means of control cannot be worked out cooperatively with the owner of the local area, the area should be acquired. Like-

wise, where local areas of severe gullying contribute most of the silt and debris which is filling in a stream channel, and thus destroy good valley farm land, as in Northern Mississippi, the acquisition of such gullied areas would be justified, provided that such gully erosion control cannot be brought about more efficiently without purchase.

To restore idle and depleted lands to productivity

In areas where there are large acreages of depleted and idle lands, State or other public acquisition of such "loafing" and low-production acres would open the way for constructive work, restoring them to more productive uses as community pastures, State or community forests, recreational areas. Because of their low productivity, such lands are now contributing little to the income of the communities where they are located. The rehabilitation of the productive capacities of such lands, in many cases, would greatly broaden and strengthen the economic and social basis of the community through increased production, improved employment opportunities, enlarged volume of business, and more stable property values.

In some areas, the problem of idle and depleted lands has not been carefully investigated, nor recognized, for that matter, but enough attention has been given to the problem in other areas by residents, research and educational workers, and officials in charge of public programs having to do with land use adjustment to reveal the need for positive action.

To permit management of tax-delinquent lands

A considerable extent of land obtained by States or counties through tax reversion or foreclosure is intermingled with other land which makes difficult the attainment of proper use of the land in public ownership. Inasmuch as land coming into public ownership through tax delinquency is not obtained in accordance with a preconceived plan or for a specific purpose, it is sometimes necessary to buy adjacent lands in order to facilitate efficient management and administration.

Existing and Proposed State and Local Land Acquisition Programs

Existing State and local land-acquisition programs include: The New England Community forest; New York submarginal farm-purchase program; Michigan land exchange with the Federal Government; and proposed legislation in Wisconsin providing for buying out nonconforming users.

Community forests

At present, there are 1,700 community forests in the United States, of which 375 are in New England and 579 in New York State. The number is increasing at an accelerated rate. Twenty States (all 6 New England States) have authorized the acquisition of land by towns, communities, or other political subdivisions. By a statute enacted in 1940, Virginia has authorized acquisition of "public forests" by certain political subdivisions. Other States have authorized acquisition in specific areas.

The possible benefits of community forests are many. They can produce cash returns from sales of forest products, furnish employment, and supply community fuel yards. They can be used for recreation, and with certain restrictions on such use, they may be the source of safe and constant community water supply.

State purchase of submarginal land

Since 1923, the New York State College of Agriculture, in cooperation with other State agencies, has been studying and classifying farm areas in New York State with reference to their suitability for agricultural purposes. As a result of these studies, certain farm areas have been designated as suitable only for recreation and forestry, and in 1931 the State authorized a program of purchase to bring submarginal farm land, much of which has been abandoned, into public ownership for forestry and recreational uses. The 20-year program anticipates State acquisition of land at an average rate of 100,000 acres per year until 4,200,000 acres have been acquired. To date about 400,000 acres of land have been acquired, or about 50,000 acres per year.

Wisconsin purchase proposal

A proposal for buying out nonconforming users in zoned areas, introduced in the Wisconsin legislature during the regular session of 1937 (Assembly Bill No. 885, A), passed the lower legislative house, but was not voted on by the Wisconsin Senate. The bill proposed to set up a State settler-relocation committee to investigate cases of high governmental costs of roads, schools, and other public services resulting from remote or isolated settlements within restricted use districts established under county zoning ordinances. With the approval of the Governor, the committee was authorized to purchase lands on which nonconforming users had been established before the enactment of a county zoning ordinance, when the removal of the owner, renter, or purchaser under a land contract would effect savings in State funds or State contributions to local units of government, or both. All lands so bought would become State forest lands.

Provision was made for a settler-relocation fund. To start the purchase of land, the bill would have appropriated $30,000 for the first year of the program, $25,000 for the second year, $20,000 for the third year, and $10,000 for the fourth year. In addition to these initial appropriations, purchase was to be financed with savings resulting from the relocation of families. The machinery for this was as follows: After the committee effected the removal of settlers, it was to determine how much of the State aid to schools and town roads "were made necessary by the presence of such settlers for the year preceding their removal." This amount annually thereafter, until the end of 1944, was to be paid into the settler-relocation fund instead of to the school districts and towns involved. These funds would then be used to buy out more families.

Requisites of a State Land-Acquisition Program for Land Use Adjustment Purposes

Certain characteristics usually associated with a successful land acquisition program are: (1) Adequate planning to assure the selection of proper lands; (2) designation of an agency to acquire the land; (3) assignment of definite responsibilities and activities to the agency charged with the job of acquisition; and (4) establishment of clear and workable methods of financing the program, including the necessary enabling legislation.

Planning a land-acquisition program

A first requisite of a land-acquisition program is a definite means of determining the areas in which lands need to be acquired for land use adjustment purposes. State land use planning committees, working as they do with the county land use planning committees in their respective States, provide a means of coordination at the State level, as well as an excellent source of information regarding desirable acquisition in the State as a whole.

Similarly, local land use planning committees and local operating agencies such as soil conservation districts provide opportunities for local review of the total situation. Zoning boards, road, school, and tax-collection officials, and other State and local agencies and officials can assist, through land use planning committees, in the preparation of plans by means of which acquisition is brought into appropriate balance with that of other measures. Generally these committees, agencies, and officials develop information with reference to the needs for acquisition in particular areas. Likewise, local committees, agencies, and officials assist in evaluating and estimating benefits of proposed purchases in relation to costs. Such benefits include savings to be made in road and school expenditures; direct cash returns from the use and management of acquired lands for grazing, forestry, wildlife, and recreation; and savings to be made by preventing the deposition of silt and debris in stream and irrigation channels.

The cooperation of the local community is essential both in developing plans for acquisition and in carrying out the acquisition itself. This is true not only because a successful acquisition program must have the support of local public opinion, but also because acquisition is only one of the steps for bringing about changes in the utilization and management of land. Usually acquisition as such must

be accompanied by other types of action, such as land-development work to improve and stabilize the productive powers of the land, measures to assist families on poor land to move or make other adjustments, reorganization in some degree of public service, particularly roads and schools, changes in the size and type of farm units, and changes in leases, and other tenure arrangements. In particular, the development of good management plans for community pastures, community forests, and recreational areas, calls for widespread local understanding and cooperation.

DESIGNATION OF AN AGENCY TO ACQUIRE LAND

In many cases States will probably find it desirable to establish a special State office or agency to handle the program. Such an office or agency may be part of a conservation department or commission if one exists; or it may be set up as a separate agency with adequate provision for the coordination of those State activities specially concerned with, or directly bearing upon, the acquisition of land for adjustment purposes. In addition to carrying out land acquisition for land use adjustment purposes, this special office or agency at the State level should be in a position to provide acquisition services for local units of government having authority to purchase lands for land use adjustment purposes.

In other cases, rather than establish a special agency, the States may entrust the administration of the program to a qualified established agency such as a forestry, wildlife, park, or conservation department. This will be highly desirable where the nature of the land use adjustment sought through the acquisition program is similar to the program of the existing conservation and development agency. In such cases, it will still be necessary for the administering agency to keep in mind at all times that it is carrying on two types of programs; that acquisition for the land use adjustment purposes must always be focused on problems arising out of land use, and that purchases under it must be aimed primarily at correcting land use maladjustments in specific areas with a minimum shift of land from private to public ownership and with a maximum utilization by local people of land resources consistent with a desirable degree of conservation of the land itself.

LAND-ACQUISITION PROCEDURE

A simple but well-defined acquisition procedure and a definite placement of responsibilities is prerequisite to State program of land acquisition to bring about land use adjustment. The land-acquisition agency should be responsible for (1) receiving purchase proposals prepared by various groups or agencies, (2) preparation of proposals in cooperation with local planning groups and agencies, (3) analysis of proposals in cooperation with local and State planning groups and agencies, (4) approval of such proposals, and (5) establishment of priorities in cooperation with the various State planning agencies.

It is highly important that negotiations for land to be acquired should be based on an appraisal of the property which is fair to both the vendor and the State. To provide an equitable basis for making appraisals, a schedule of values can be developed for each area in consultation with local farmers, bankers, real estate dealers, or others familiar with values locally. Such a schedule can indicate within rather close ranges the values to be placed by the appraiser upon different types and grades of land, and the improvements thereon. The acquiring agency will need experienced men for such appraisal work. Waste motion can be avoided if appraisals are made only with the consent of the property owner and after it has been determined that he is willing to negotiate for the sale of his property.

Negotiations with the owners for the purchase of the property can be guided by the appraised value. Only under unusual circumstances and with special justification need the purchase price exceed the appraised value by more than a fairly small percentage, say 10 percent. On the other hand, if negotiations are concluded at prices which average substantially below the appraised values, either the schedule of values being used is too high, or undue advantage is being taken of vendors who are not in a position to bargain.

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To permit an examination and a correction of defects in the title of the land prior to the payment of the purchase price, a good procedure is for the vendor to sign an option at the conclusion of negotiations. Such an option should provide for the payment of the purchase price upon the execution of a title satisfactory to the acquiring agency. The acquiring agency should have access to competent legal advice with respect to title either through the county attorney, the Attorney General, or by means of a special legal adviser. Defects which are likely to interfere with the use to be made of the acquired land should be cured before payment of the purchase price. Obviously, the use to be made of the land will have a great bearing upon the degree of perfection to be required of the title. Minor defects which, although perhaps constituting a cloud on the title in a strict legal sense, are not likely to give trouble in practice, may well be left for curing when difficulty actually arises. Otherwise, a great deal of time, effort, and expense may be devoted to curing defects which in the ordinary course of events would not give rise to difficulty.

The use of condemnation proceedings to acquire land for a State land use adjustment program will depend upon State policy. Friendly condemnation agreeable to both parties may be a helpful means of clarification where the vendor is unable to furnish a satisfactory title. Where a definite case can be made, the use of condemnation procedure is probably justified in the interest of public health, safety, and welfare. Such procedure has been used successfully, though not extensively, by the Federal Government in connection with its submarginal land purchases.

The development of an efficient organization and a well-defined purchase procedure by the State land-acquisition agency will make the agency valuable not only in carrying out acquisition activities for a State land use adjustment program, but also in rendering such services as appraising, negotiating and title clearance for local agencies engaged in the acquisition of land for land use adjustment purposes. Such services may be rendered to local governments at State expense, or at cost.

In some States, new enabling legislation will probably be necessary before land acquisition can be used effectively by State and local governments; in others, existing statutes may have to be amended. Students of the problem in various areas have made a number of suggestions as to the types of authority required for the operation of such programs. The more important of these suggestions are here summarized.

It is generally felt that insertion of clear-cut statement of the objectives in new legislation makes for a better understanding of the program, of the need for it, and of the course which its administration should follow. The program for the retirement of submarginal lands under Title III of the Bankhead-Jones Farm Tenant Act, Public Law No. 210, Seventy-fifth Congress (U. S. C., title 7, sec. 1010) is summarized in the following statement:

> * * * to develop a program of land conservation and land utilization, including the retirement of lands which are submarginal or not primarily suitable for cultivation, in order thereby to correct maladjustments in land use and thus assist in controlling soil erosion, reforestation, preserving natural resources, mitigating floods, preventing impairment of dams and reservoirs, conserving surface and subsurface moisture, protecting the watersheds of navigable streams, and protecting the public lands, health, safety and welfare (sec. 31).

If authorized purchases include acquisition both of submarginal lands or lands not suitable for cultivation and of good crop and grazing lands, exchange with isolated settlers for land and other considerations of equal value is facilitated.

Authorization for acquisition should be given to both State and local levels of government. Most acquisition is likely to take place at the State level; a single agency should be responsible for it. In States having conservation departments, this agency may well be a new division in that department. On the county and township level, where the creation of a new office or agency will probably not be practical, acquisition should be handled by the county or township commissioners. Similarly, soil conservation districts and other local governmental units may exercise their authority to acquire lands for

these purposes without setting up any special administrative machinery. The State acquisition agency may well be authorized to lend technical assistance to local acquisition agencies of the kinds discussed.

The following methods are all useful for the State acquisition agency and the local acquisition agencies in acquiring land and interests in land for land use and occupancy adjustments: (1) Purchase; (2) donation or gift; (3) exchange with private individuals and public authorities; (4) transfer from other governmental agencies; and (5) lease. Acquisition subject to outstanding interests should be permitted when necessary.

Authority to dispose of lands may well include: (1) Sale through public bidding or private transaction; (2) transfer to other governmental agencies, either with or without a consideration, for administration, and management; (3) lease; and (4) exchange. In the exercise of the authority to dispose of lands, the conveyance of determinable fees or fees upon condition, and the imposition of restrictive covenants should be authorized.

The financing of a land use adjustment program and the disposition of receipts from the land acquired is recognized as presenting other important problems which require legislative solution. At the outset, at least, appropriations will be necessary. Bond issues may be justified in those cases where it is anticipated that revenues from the land acquired and savings in the cost of public services will eventually exceed expenditures for the acquisition of the land, and its development and management.

The lapse of time before revenue will be received from the land will depend largely upon the use to which the land is put. Returns from recreation and grazing may start almost immediately after the lands are acquired and developed. Such revenues should be deposited in a special or revolving fund. In providing for equitable distribution of the returns from the land acquired, consideration should be given to the fact that State and local tax bases have been reduced. A portion of the revenue should therefore be used for payments in lieu of taxes. Such payments may not be necessary to the States but in the case of local governments they will often be very important. Other uses of the revenues which should be authorized are to help defray management expenses, and when surpluses are on hand, to acquire additional lands.

Management and Development of State and County Lands

THE RAPID increase in the amount of land owned by States and counties during recent years and the emergence of a vast new "public domain" has brought administration of public lands into the foreground. Public interest has been stimulated because much of the new domain has been acquired rather spectacularly through the reversion of tax-delinquent land and the foreclosure of mortgages held by State or local public agencies, but the States also own millions of acres of land that have never been in private ownership. Across the length and breadth of the United States, State and county governments now own approximately 155 million acres of land; in some localities this type of ownership accounts for as much as 80 or 90 percent of the land area.[9]

This chapter deals with State and county lands obtained through tax reversion and foreclosure, and with lands in State ownership that are not now devoted to any specific land-management purpose. Unless specific exception is made, it is not concerned with lands acquired for a specific public use such as forests, parks, and game preserves. Federally owned lands are also excluded except insofar as they may be related to the problem of managing State and county lands.

[9] This chapter was prepared by the following subcommittee: Maurice M. Kelso, chairman, Bureau of Agricultural Economics; Ellery A. Foster, V. Webster Johnson, John J. Haggerty, Ann S. Kheel, Bureau of Agricultural Economics; Clarence I. Blau, Charles F. Hagan, Harold Ham, Maurice Silverman, Office of the Solicitor; Virgil Gilman, Extension Service; A. B. Lewis, Farm Credit Administration; Edward Stone, Farm Security Administration; H. C. Hulett, Forest Service; Edward Crest, Soil Conservation Service; Paul Taylor, Office of Land Use Coordination.

Public Policy for Public Land

From the time the United States became a Nation until shortly after the turn of the twentieth century, public land policies were largely premised on the general belief that all land should be placed in private ownership as soon as possible. Since natural resources were abundant in proportion to population, there was little apparent need for conservation measures. As a consequence, land programs, both State and National, were designed solely to transfer land title to private owners. The Homestead laws, the State land grants, the railroad grants, and similar legislation, reflected this philosophy.

In the earlier years, occasional exceptions to this approach are to be found in the writings of men like Major Powell, who perceived the consequences of the current policy in the Great Plains and in 1878 recommended radical changes in the land system. Later, Theodore Roosevelt and Gifford Pinchot saw the evils of unregulated use of resources and were influential in securing legislation for the preservation of forests, oil, and minerals, by keeping them in public ownership. Resource conservation made little progress in the thinking of the people at large, however, because the harmful effects of exploitation were not yet apparent. As long as there was an abundance of cheap land, little attention was paid to maintenance of soil and grass. The farmer looked at forests as an obstacle to farming development and the lumberman considered them a fund of wealth to be liquidated as rapidly as possible.

But by 1920 large parts of the forest resources were exhausted; in the following decade grain farming proved a failure in many parts of the West. People were forced to take stock of the situation and undertake the conscious direction of land utilization through public action.

In spite of the fact that our land policies have been predicated on the belief that all land was destined ultimately for private ownership, public land ownership (at all levels of government) has always been important in the United States. After more than a century during which public land programs have been aimed almost exclusively at the encouragement of private ownership, State governments still own some 55 million acres of land which they have never been able to alienate, and in addition, about 100 million acres that have reverted or are subject to reversion to State and county governments following a period in private ownership. In many areas, despite an aggressive sales policy by various units of government, a very small proportion of the public lands acquired through reversion have been returned to private ownership.

As a practical problem, therefore, the immediate question is not whether public ownership is desirable but rather how these lands can be administered and utilized in public ownership. If opportunities for sale improve in the future, it may be necessary to decide whether private ownership is preferable to public ownership and to take action conforming to that decision. But the citizens of various States have recognized that until such a time comes, we have and will have large-scale State and county ownership; they are going about the formation of a realistic land policy to provide for enlightened administration of lands in that status.

Although the reversion of tax-delinquent land accounts for the public ownership of the bulk of the land here considered, other factors contribute to the situation. Mortgage foreclosures on loans made by local governments from school trust funds have added considerably to public land holdings in some areas. The operations of State credit agencies, such as the Bank of North Dakota and the South Dakota Rural Credit Department, have resulted in large-scale land acquisition. Also to be considered are the State lands acquired by grant from the Federal Government and never transferred to private ownership. While for some purposes it is necessary to distinguish between these types of public land—in the case of the Federal lands, conditions of the grant or provisions of the constitution or statutes of the State may require that these lands be continually for sale—they have many points of similarity. They are generally treated as speculative real estate, for sale or lease to the highest bidder, with no comprehensive program for their management nor for the conservation of their soil, timber, and forage resources. What is needed, therefore, is a policy either for allotting rights of use to individuals through sale or leasing or for direct public use and development, with appropriate measures to conserve natural resources and to aid in the rehabilitation of the people and of their local governments.

This chapter summarizes State experience with various types of administrative devices for managing the public lands, and outlines their general lines of action for dealing with the problem.

REGIONAL DISTRIBUTION OF PUBLIC LANDOWNERSHIP

The recent growth of landownership by States and counties has been most pronounced in areas generally recognized as needing adjustments of one sort or another, such as changes in the size or type of farm, in tenure relationships, in taxation and local government, or in the basic form of land utilization. Although some land in the more stable agricultural areas has reverted through tax delinquency, it has usually been returned to private ownership with little delay. More serious maladjustments are indicated when land that has reverted to public ownership remains in that status.[10] In some cases, the cause is inherent low productivity of the land or depletion resulting from misuse of resources. In other cases, high fixed charges of public or private finance have forced land into public ownership. The areas in which public ownership is most prevalent are those chiefly considered in this report.

[10] The extent and character of chronic delinquency is discussed in ch. 6.

The problem of public land ownership is probably most significant in the Northern Great Plains region and in the Great Lakes cut-over area, but it is also important in the Southern Appalachians; the Ozark region, the hilly region of southern Illinois, Indiana, and Ohio; the Gulf Coastal Plains, including Florida; the cut-over region of the Pacific Northwest; portions of the Inter mountain area; and to a more limited extent, parts of New York, New Jersey, and northern New England. Although conditions differ widely in these various areas, the general picture is one of depleted resources and diminishing productivity. In the timbered areas, this deterioration often resulted from clear-cutting the timber and exploiting all forest resources; in the semiarid regions, range lands have been overgrazed or have been plowed up in unsuccessful attempts at farming operations. In both types of area, land values high in relation to productivity, poor credit facilities, and heavy property taxation have contributed to the failure of private operations.

Often the process of tax delinquency has been accelerated by local government costs which prevent reduction in tax burdens proportional to the decline in resource values. Some of these costs point to the need for reorganization of local units, but the bulk of them are due to requirements for roads, schools, and other public services which continue regardless of diminishing taxable wealth. Attempts to finance these governmental services from a declining tax base require increasingly higher tax rates, and force more and more land into public ownership through tax delinquency. The cumulative tendency is to bring into public ownership even relatively productive land which would not become tax delinquent under more reasonable tax rates.

land did not alarm the people of the cut-over region because they believed that an agricultural economy would speedily replace vanishing lumber resources. But recession instead of progression of settlement took place as part of the post-war depression and other factors which were apparent in the older parts of the region even before the depression set in, also hindered this development. Much settlement was begun by timber workers whose attempt to make a living by farming after the timber resources had vanished was often defeated by poor and stony soils and an isolated pattern of settlement.

Lack of employment opportunities and the failure of farming operations on land unsuited to agriculture have resulted in heavy relief costs, waste of human resources, and general distress. Idle land and idle men have imposed a burden too great for the local units of government, increased State and Federal aids for schools, roads, and made necessary huge relief programs. In Minnesota alone, more than 6 million acres have been forfeited for nonpayment of taxes. It is estimated that from 30 to 50 years will be required to reestablish a forest economy on a sound basis in many parts of this region. Insofar as forestry is unattractive for private owners, large amounts of this land will have to be handled through public ownership or remain idle and nonproductive.

In the Northern Great Plains wide fluctuations in precipitation and temperature have had a direct bearing upon the development of agriculture and local institutions. Although many of the soils are well suited for crop production, extreme variations in climate constitute great agricultural hazards. Favorable weather conditions and relatively high grain prices led to the rapid settlement of the region when it was opened for homesteading. The range was divided into thousands of small ownership units, and a large part of the native sod was plowed up for grain production.

During the last two decades, however, drought and low prices brought financial distress to many of the operators and to local governments. Several of the States established credit agencies to make loans on farm land in an effort to maintain the economy of the region, but the

declining trend could not be reversed by credit, and much of the mortgaged farm land was eventually foreclosed. In North and South Dakota, for instance, State and county agencies own more than 4 million acres of land acquired through credit operations. In five States—North and South Dakota, Wyoming, Montana, and Nebraska—approximately 7½ million acres have become public property through tax reversion, and large acreages of land are subject to tax deed.

Problems of public land administration in this region differ from those of the Lake States in that nearly all of the lands are suitable for some farm or ranch use at the present time and do not involve the long waiting period characteristic of reforestation, though in many cases reestablishment of the grass cover is necessary. From an administrative standpoint, the public land problem in this region is largely one of devising a mechanism to distribute tenure rights on State and county lands among private operators in such a manner as to develop and stabilize land utilization.

In the coastal portion of the Pacific Northwest and in other parts of the Northwest, farm and ranch operations have expanded more gradually into the forested areas, and the problems of adjustment are therefore not so acute as in the Northern Plains and Great Lake States. But in parts of the Pacific Northwest, the supply of virgin timber is almost exhausted, and the removal of forest resources is being followed by a shifting of the tax burden to the more stable agricultural areas. Here again the problem involves carrying large areas of unproductive cut-over land in public ownership for many years until forest resources are rehabilitated.

In the Southern Appalachians, the Ozarks, the hill lands along the Ohio River, and the Southern Coastal Plains region, the decline of the timber industry has left similar problems of readjustment. In some localities, cut-over lands are being put to a productive use, but over most of the area a large part of the land will bring relatively small returns for many years. Because of the population density within these regions—greater than in any other area where public ownership is important—it is likely that many people will have to seek opportunities elsewhere or be supported by relief or by employment in timber rehabilitation until the timber economy is restored.

THE DEVELOPMENT OF STATE LAND LAWS

State legislation concerning the use of public lands is hardly a generation old. In keeping with the prevailing policy of transferring public land to private ownership, most statutes enacted before the first decades of the present century merely provide for the sale of State lands, particularly those lands acquired by grant from the Federal Government; references to the management of such lands while in public ownership are meager. Early tax laws usually provided a procedure for dealing with tax delinquency, but the emphasis was on selling tax liens to private buyers regardless of the reason why the land became tax delinquent, and with little consideration for whether it was suited to remain in private ownership.

One of the first manifestations of a change in policy was a series of conferences in Michigan in 1919, at which public officials and others met to consider the problem of tax delinquency in the State. Plans were made for an inventory and classification of tax-delinquent lands in order to direct agricultural expansion to the lands adapted to that use and to encourage forest development in other areas. A policy was later adopted under which a large part of Michigan's public lands eventually came under the jurisdiction of the State Conservation Commission which was empowered to withhold from sale such lands as were suitable for forests, game preserves, parks, and recreational grounds, and to make payments in lieu of taxes to the local units deprived of income by these reservations.

were developed to prevent settlement in isolated locations and on submarginal lands.

In another cut-over region, the State of Arkansas recently enacted a law providing for the management and use of tax-reverted State-owned lands. The purpose of this act and its main provisions should have wide application throughout the South Central States, particularly Louisiana, Mississippi, Alabama, and Tennessee.

In the Northern Great Plains, tax delinquency became prevalent during the period from 1920 to 1930; the aggravation of the problem after 1930 by repeated droughts and low prices rendered many local units of government insolvent. Much privately owned land was subject to tax deed or had reverted to public ownership. Attempts to sell public lands were largely unsuccessful, partly because of the general distress of farm and ranch operators and partly because land could be leased for a fraction of the taxes charged against the owners. Even leasing programs were unsuccessful: From the standpoint of private operators, the rentals and lease terms were not conducive to stable operations, and from the viewpoint of the public agencies the fiscal returns were inadequate. The situation was complicated by a multiplicity of landowning agencies and an intermingled pattern of ownership. As a result, relatively little public land was leased, some lay idle, and much was used as "free land."

Out of this situation came legislation such as the South Dakota Land Administration and Management Act of 1939. This law is designed to encourage a stable leasing policy in place of the previously emphasized sales program. It provides for: (1) Classification of county lands into two categories, those to be placed under a long-term-lease program and those to be returned to private ownership as soon as possible; (2) a method of leasing and management to regulate grazing, conserve resources, and assist in stabilizing farm and ranch operations; (3) exchange and consolidation of county lands; and (4) certain improvements in the lease agreements with private lessees.

These examples of State legislation show that a number of States have recently adopted positive lines of action for dealing with the administration of their public lands.

But although a third of the States make some statutory provision for the management of State lands other than those acquired for a specific public use, 32 States have no provision for management of the types of land with which this chapter is primarily concerned. In a few cases, all State-owned lands of the type under consideration are simply held for unrestricted sale or homesteading with no attempt to develop a management program for land continuing in public ownership.

In nearly all States the emphasis of public land legislation is on sale provisions. In about 10 States, the only statutory provision with regard to tax-reverted land relates to sale. In two-thirds of the States, the laws provide for the resale of tax-reverted lands without consideration of whether they should be retained in public ownership or whether they could be utilized for public purposes. In a number of cases, these lands are available for public use and management only after it has been found impossible to dispose of them in any other way. In nearly all States, school land is held for sale or is leased with no restrictions on its use, the sole consideration being the production of revenue. In approximately a third of the States, legislation either provides for the assignment of State lands to various agencies in the State or authorizes one or more agencies to select State lands not otherwise under constructive management and use them for the purposes of the agency.

A dozen States provide for the classification of public lands which are not acquired for a specific purpose, but in only two or three can the provisions be termed comprehensive. In many cases, the purpose of classification is apparently only to expedite land sales. The classification procedure frequently does not apply to all categories of State lands. In only four or five States are there statutory provisions imposing restrictions on use, and thereby protecting land from exploitation after it is passed into private ownership.

The States have thus moved at varying rates of progress toward supplying the statutory basis for effective administration of public lands.

But inasmuch as interest in public lands and their administration is a comparatively recent aspect of our land policy, the above legislation is encouraging evidence of an aroused public interest in constructive land programs.

Problems and Policies of Public Land Administration

Prerequisite to good public land administration is an inventory of the lands to be administered. Once the areas under State control have been classified, action can be taken to put them to good use through one of the following techniques: (1) The transfer of public land to private ownership through sale, homesteading, or other methods of alienation with or without restriction; (2) the direct public management of lands for such public uses as timber growing, wildlife protection, grazing, recreation, watershed protection; and (3) management through soil conservation districts and through cooperatives, grazing districts or other organized groups of private users.

But although it is now clear that a sales policy will not dispose of the whole problem of public land ownership, as public land agencies develop programs more and more in anticipation of continuing public ownership for certain lands various conflicts of policy may appear. Within a single State two or more agencies may have diverse philosophies of administration. For example, there may be a department in charge of school lands which, for a long period, have been managed under a leasing program, and there may be a public credit agency with an aggressive sales policy for the land acquired through mortgage foreclosure.

One of the major present problems of public land administration is the reconciliation of divergent philosophies of ownership in such a way as to produce interagency cooperation. After a choice has been made between a policy of public and one of private ownership, adequate consideration should be given to the use of the land. The land that is to be returned to private ownership should be returned under conditions affording reasonable assurance that its resources will be conserved and that it will not again revert to public ownership. The land that is to be retained in public ownership should be placed as soon as possible under an active program of public administration. It should not be forgotten that public ownership is not the same thing as public management. Ownership is a passive matter of title. Management is an active program of use.

Land Classification

The first step in developing a public land program is to determine the characteristics of the public land, to take a physical and economic inventory that will serve as a basis for determining its best use, and for making future decisions respecting its management and development.

A number of colleges of agriculture, other State and local agencies and Federal agencies, have for several years been engaged in the classification of lands. A number of State legislatures have likewise taken action and provided the necessary legal machinery for classification of certain categories of land.

Arkansas law provides that State-owned lands are to be classified as to whether they should be (1) retained in public ownership, (2) allocated for agricultural settlement projects or returned to private ownership through sale or donation. The State Land Commissioner has authority to direct that land shall be retained and administered by appropriate State or local agencies.

A bill considered by the 1940 session of the Mississippi Legislature provided for a State Land Policy Commission with authority to make a classification of tax-reverted lands according to use. The purpose of classification was to assist in developing a program for disposing of State lands through allocation to public agencies, homesteading, sale, and otherwise.

The Michigan Conservation Department may classify all lands acquired through tax delinquency in the northern counties which are under its jurisdiction and on the basis of the classification may reserve for forest purposes lands not suitable for agricultural uses.

According to Minnesota legislation, after title to tax-reverted land vests in the State, the

land is to be classified as conservation or non-conservation land by the county board of the county in which it is located. Before any land is offered for sale in certain designated State conservation areas, the classification must be approved by the State Conservation Commission. Outside of these special areas, the classification must be approved by the township board. The law, enacted in 1939, requires that tracts classified as conservation land must remain in public ownership unless reclassified. The law further specifies that the accessibility of the land, its proximity to existing public improvements, and the effect of its sale and occupancy upon the public burdens must be considered in making the classification.

The County Land Administration and Management Act in South Dakota authorizes the board of county commissioners to classify county-owned lands in two categories. Class I lands are those designated for sale and return to private ownership; class II lands are not to be sold and are to be placed under a program of management. The act does not specify the criteria for either class of land; it simply provides for an administrative classification as the basis for a differential lease program.

Time and expense are limiting factors in classification—the first surveys made are likely to be extensive rather than intensive. For these general surveys, area classification, as done by community and county land use planning committees, is useful. On the basis of the committee members' knowledge of the physical character and condition of the land, the prevalent type of farming, and other factors, major land use areas can be mapped accurately enough for the first needs of a public land program. Further, State and county land-management agencies may participate directly in this planning work; use is thus made of the special knowledge of both farmers and technicians in working out the details of a unified program for State and county lands.

Classification by major areas should suffice in forested areas of extensive cut-over or second growth, except in certain sections where there is need for occasional appraisal by tracts for farming purposes.

In grazing and arable areas where relatively small tracts can be handled on an individual basis, the initial extensive classification should be followed by a detailed study of the factors which have land use implications: Type and condition of soil and forage resources; the number, kind, and condition of buildings, water facilities, and other improvements; the size of individual tracts and their adaptability as stable farm and ranch units; the location of units and the availability of roads, schools, and other public services. From a practical viewpoint, however, it is necessary to consider the value of public lands in relation to the cost of detailed classification. In other words, the intensity of classification should be adjusted to the importance of the lands involved.

ALIENATION OF STATE AND COUNTY LANDS

After land classifications such as those just described have yielded the salient facts with regard to the lands in public ownership, criteria should be established for determining which lands are to be made available for private ownership and which are to be retained under public management, and procedures set up for the transfer of title in the former case and the inauguration of management policy in the latter.

Sale of Public Land to Private Parties

Land returned to private ownership should be returned with the expectation that resource depletion, tax delinquency, reversion, and resale will not be repeated. Since the pressure to return public lands to private ownership may be great in areas where land suitable for occupancy is limited, successful public land administration is likely to require authority to exercise a high degree of discretion over the disposal of land.

Much State legislation, often quite detailed, provides procedure for sale by contrast to homesteading as a method of returning public land to private ownership. In general, the statutes provide for a minimum sales price established either by statute or by the State constitution or based on an appraisal by a duly constituted authority. Usually land to be sold

must be advertised publicly, and competitive bids often are received from potential buyers. Plans for sale under "contract for deed" are common.

In Arkansas, the commissioner of State Lands, who is also charged with the responsibility of classifying and managing State Lands, has charge of the disposition of lands which are classified for return to private ownership.

In Michigan, tax-reverted lands located in the northern counties of the State are under the jurisdiction of the department of conservation, other State-owned lands acquired through tax delinquency are under the jurisdiction of the State Land Office Board. However, after May 1, 1944, all State-owned land acquired through tax delinquency will be under the administration and control of the department of conservation. The director of conservation, with the approval of the conservation commission, classifies which lands under the jurisdiction of the department of conservation are to be available for sale and fixes a minimum sale price for the remainder.

Under the South Dakota County Land Administration and Management Act, the sale of real property acquired by the county through foreclosure of school fund mortgage or through tax delinquency is vested in the board of county commissioners. The board makes an appraisement of the land subject to sale, and no sale shall be made for less than the amount at which the land is appraised. If the appraised value is not greater than $10[illegible], the purchaser must pay one-fifth of the purchase price or $[illegible], whichever is greater, and the balance in five equal annual installments. Deeds are executed in the name of the county by the chairman and the board at the board's discretion, under seal attested by the county auditor. If less than the full purchase price is paid, a "contract for deed" is executed in the same manner as prescribed for deeds, such a contract having the same effect on behalf of the county to convey title upon full performance by the purchaser of the considerations set forth in the instrument. If the purchaser defaults on the contract, the county may foreclose and retain all payments as taxes, penalties, and liquidated damages. The law also provides that, in addition to the purchase price, the county must pay to the defaulted purchaser the reasonable value of any improvements erected by him with the approval of the board of county commissioners and not physically capable of removal. The value of the improvements may be determined by the parties, but if they cannot agree, the commissioners appoint a board of appraisal of three disinterested persons to view the improvements and determine their value.

Homestead Procedure

Homesteading on State lands has not been widely encouraged in recent years. One reason is that considerable machinery is necessary to investigate whether the settler is carrying out the State's requirements. Michigan, under a law of 1935, tried the system and has since abandoned it. However, Arkansas included a homestead procedure in its recent land legislation, and a bill proposed in Mississippi in 1940 but not adopted also contained such a procedure. In both these States the procedure was intended to be a means of creating low-income farm families.

Under the proposed Mississippi bill, heads of families who had lived in the State for a minimum number of years and who were, or recently had been, "[illegible] farmers, farm tenants, sharecroppers, or farm laborers," would have been eligible for homesteads of a size suitable to [illegible] by a single family. It was anticipated [illegible] would remain, in addition to ...

of 2 years, if the conditions of the contract had been fulfilled, the homesteader would have been entitled to a deed. Besides allocating the lands under conditions necessary to secure their development in accordance with the State policy, the commission would have been specifically authorized to cooperate with Federal agencies in arranging assistance to homesteaders. The commission also would have been permitted to sell tracts of land at no less than their appraised value, but in no greater quantities to any one purchaser than would, when added to land already owned by such purchaser, comprise a family-sized farm. Deeds of conveyance, issued as a result of homestead sales or exchanges, were to have contained such reservations and restrictive covenants, including restraints on alienation, as the commission considered necessary to insure constructive use of the land and to protect the interest of the State.

Deed Restrictions in the Transfer of Public Lands

An increasing number of authorities are emphasizing that in the interests of conservation, stability of tenure, and maximum income over a period of years from lands sold into private ownership, consideration should be given to the use of restrictive covenants in the conveyances of title to public land. Thus, agricultural land located in areas inaccessible at certain seasons of the year might be sold with a stipulation forbidding year-round occupancy of the land for family residence. Similarly, certain grazing lands in the Great Plains might be sold on the condition that they would not be plowed.

The possibilities of deed restrictions to provide continuing public control over land returned to private ownership have never been fully explored. One disadvantage inherent in the procedure lies in the practical difficulty of specifying conditions that are effective in preserving public interest in the lands, without imposing undesirable rigidities in land utilization over a long period of changing conditions. To meet this situation the deed restrictions might be made applicable during a specified period or title to the land might be retained by the governmental authority until certain conditions have been satisfied. For example, in connection with returning lands in the alluvial area of the Mississippi River Valley to private ownership, it has been suggested that evidence that the settler had managed and developed his land properly and that he had not incurred debt in excess of a stated amount be made conditions precedent to a conveyance to him.

The comprehensive Arkansas statute for the management of State-owned lands provides that "where lands are disposed of by return to private ownership, the land shall contain such restrictive covenants or restraints on alienation as the land use committee of the State Planning Board may deem necessary to insure protection and use of the land in a manner beneficial to the public."

In Minnesota, there is authority to attach to the sale of lands forfeited through tax delinquency "conditions limiting the use of the parcels so sold and/or limiting the public expenditures that shall be made for the benefit of such parcel and/or otherwise safeguarding against the sale and occupancy of said parcel unduly burdening the public treasury."

A North Dakota statute passed in 1939, which provides for the resale of lands acquired by the State on foreclosure of mortgages given to secure loans of permanent school funds, or by deed in lieu of foreclosure, contains the following provision:

> The purchaser shall farm the lands in a good and husbandlike manner according to the practice of farming in the vicinity in which the land lies and according to the manner of farming of lands of like character, and shall produce therefrom such income as such lands are reasonably capable of producing, having due regard to climatic conditions and to the prices of agricultural products such as said lands are reasonably adapted to raising, including livestock, dairy products, vegetables, fruits, grain and forage crops.

Exchange of Public Lands

Since both State and county lands are often intermingled with land in other kinds of ownership, both public and private, effective management is facilitated by authority to exchange land with other public agencies or with private persons. This permits the landowning agency to "block up" its holdings without making a cash outlay for purchases, and may be used to reduce

the costs of resettlement activities. A number of States have made such legislative provision for the exchange of public land.

The South Dakota Land Administration and Management Act authorizes the board of county commissioners "to exchange by transfer of title or lease scattered and isolated tracts and sections of county-owned lands for other public or private lands of like character in value."

The Wisconsin statute permits the exchange of lands by the county or State as follows:

> For the purpose of blocking out State-owned and county-owned forest lands, the State or any county is authorized to exchange any of such lands for other lands adapted for forestry purposes, whether publicly or privately owned. The word "exchange," as used herein, includes the purchasing of lands without conveying other lands in exchange therefor. The exchange of such lands when owned by the State shall be made by the Conservation Commission, subject to the approval of the governor, when owned by a county, such exchange, if authorized by the county board shall be made by the chairman of the county board and the county clerk. All such exchanges shall be determined on the basis of equal values and shall be negotiated as herein provided.

Minnesota legislation provides that the Land Exchange Commission, consisting of the Governor, the Attorney General, and the State Auditor, may "by unanimous approval exchange any lands to which the State now holds title or in which title shall be acquired by the State * * * for lands of equal value and now owned by the United States, or lands owned by private citizens or corporations." Provision is made for the reservation by the State of all minerals and water rights in State lands which are exchanged.

A Michigan law states that:

> Any of the lands under the control of the public domain commission, the title to which is in the State of Michigan, and which may be sold or conveyed or which are a part of the State forest reserves, as well as such lands hereafter acquired by the State of Michigan or any part or portion thereof, may be exchanged for lands of equal area or approximately equal value belonging to the United States or owned by private individuals whenever in the opinion of the public domain commission it shall be the interests of the State of Michigan so to do.

In conjunction with this statute, the Federal Government has purchased land under the act of March 3, 1925, to the extent of one-fourth of a million acres within or adjacent to the State forests of Michigan and exchanged this land in turn for an equal value of land (and timber) owned by the State within national forest boundaries. This has made for consolidation of respective holdings; it has permitted putting 2 acres under management for the price of 1.

MANAGEMENT OF LAND REMAINING IN PUBLIC OWNERSHIP

Public administration of lands remaining in public ownership requires enabling legislation, to designate the responsible agency or agencies and to outline procedure for the preparation of plans for resource management, the carrying out of various forms of resource improvement and development, the sale of resources from the land and the issuance of permits to private parties for specific uses of designated tracts.

Powers that may be needed by designated agencies include authority to plant trees and other vegetation needed if the land is to be used for timber growing, wildlife production, watershed protection, erosion control, stock grazing, hay cutting, etc.; the construction of such improvements as fences, dams, ditches, logging roads, and engineering measures to control erosion, water levels, water distribution, and provide stock-watering facilities, and equipment of public recreational areas.

Authority for the agency to sell resources from the land and to issue permits for certain uses may include authority to sell timber stumpage in small blocks; to grant suitable renewable permits for stock raising, hay cutting, and other purposes at appraised value without competitive bidding; to issue nonrenewable permits to deal with temporary conditions or emergencies like disposal of fire-killed or wind-thrown timber; and to provide for the use of resources pending completion of the long-term management plan. It may be desirable to authorize preferences to small operators or cooperative associations of such operators. Authority to use timber, gravel, and other materials on the public lands to improve such lands, and to facilitate the use of such resources in connection with the programs of other local State and

Federal agencies, may provide necessary materials for public construction at substantial savings to taxpayers.

A Leasing Program for Public Lands

An alternative to direct management of public lands is management through soil conservation districts and through cooperatives, grazing districts, or other organized groups of private users. In such cases a leasing procedure is required by which State or county governments can authorize use of land for private operations, particularly grazing, but continue to exercise some measure of control over such lands.

Essentially the problem of leasing State and county lands is one of allotting to private parties the right to use the lands in such a way as to achieve both individual and social ends. Since the success of the leasing system depends upon the success of private operations, public land policy—particularly in areas like the Northern Great Plains—should encourage stability of ranch and farming operations as well as proper utilization of resources. Such stability is equally to the advantage of the private farm or ranch operators who obtain the right to use public lands.

As security of tenure for individual lessees is disturbed if lands are subject to sale, the public agency might well determine in advance what lands are to be sold and then grant leases to other lands with reasonable assurance of long tenure. Under the South Dakota Land Management Act, lands classified as suitable for immediate resale are leased with reservations, but other lands become subject to sale only at long intervals and upon reclassification. Another method of insuring continuity of lease tenure is to lease land for an indefinite period, providing for automatic renewal of the lease by an annual rental payment on or before a specified date. Security of tenure is also increased by granting lessees the first right to purchase the land offered for sale.

In the past, desire for revenue has prompted public agencies to lease land by annual competitive bid, with the lease going to the operator offering the highest rental, irrespective of the use to which he plans to put the land. Recently a tendency has developed to make exceptions to the competitive bid principle. The leasing agency may well be given the power to establish certain criteria of preference so that leases can be granted on an equitable basis to operators who are in a position to use the land properly and profitably over a period of years while still providing revenue to the Government. A selective leasing arrangement would include regulation of the use and types of crops grown on the leased land, limitations on the number of livestock per acre, and restriction of grazing to those seasons in which grass is not easily damaged.

A selective lease policy should not, however, give preference to prior users of public land without some reservations to safeguard the interests of small operators, potential operators, and the general public by providing means through which the claims and privileges of existing operators may be contested. Possibly some sort of State supervision through the creation of boards of appeal would insure against abuse. In issuing binding long-term leases, provision should also be made for changing the leasing rate during the period in which the lease is in force. As conditions of the range and land values fluctuate, rentals should be sufficiently flexible to correspond with the current productivity of the land. Under the South Dakota Land Management Act, "in order to conserve and protect the existing forage resources * * * and to restore the maximum carrying capacity of range lands," the board of county commissioners must

> * * * reserve the right to regulate and limit the amount of grazing thereon and to change the rentals annually in accordance with a variable scale of rental charges based on market prices for livestock or livestock products, the number and character of stock to be grazed, the carrying capacity of the lands, or on any combination of these factors.

Flexibility may also be introduced by authority to charge different rentals on different tracts of land, a power denied by some legislation which specifies uniform rates for leases. Although this flexibility is desirable for the purpose of securing the highest returns from land compatible with sound use, it requires a detailed evaluation of each tract of land in order to determine a fair rental. To this end, a complete set of land

records and land-classification maps is necessary. When this procedure is followed a responsible agency should be empowered to make the needed classifications and evaluations, as well as to supervise land use practices.

An alternative to direct management of public lands is management indirectly through leases to cooperatives, grazing districts, soil conservation districts, or other organized groups of private users, under a leasing procedure by which State or county governments retain a right to guide or control the use of their public lands in private operations. Leasing public lands to organizations of this kind eases the administrative burden on the public body, particularly when an organization is large and leases many lands. The public body can conduct negotiations for leases with a single organization instead of with a number of individuals and the question of which individual should be given the use of a certain tract of land then becomes a matter for the organization, rather than for public officials, to decide. Likewise, a large organization willing to lease all public lands within a defined area furnishes a market for leases of lands that might otherwise produce no revenue.

Persons who actually use the lands also gain advantages from this method of leasing. Lower lease charges can often be secured by a group willing to lease all of the public lands within a large area, since decreased administrative costs, and the leasing of lands that formerly were unleased, may increase the total return to the State or county despite a lower lease rate. The use of lands, both public and private, by individuals is facilitated by group leasing, as an organization can lease private as well as public lands to block up areas and to coordinate the use of all the lands.

Grazing districts of Montana, operating under the Grass Conservation Act of 1939, offer an example of this type of leasing agency, as do also soil conservation districts, which are authorized by the laws of 38 States.[11] Soil conservation districts in Colorado, New Mexico, North Dakota, and Utah, have already leased lands, as have all grazing districts. The Montana law creates a State Grass Conservation Commission composed of five members, which participates in the organization of grazing districts and has limited supervisory powers over a district's directors.

A group of stockmen who wish to form a grazing district must make application to the Commission, which then holds a public hearing on the matter and either grants or denies a permit to organize the district, depending principally upon whether it seems likely that the district will be able to lease enough land and to secure enough members to control, with the lands of its members, more than 50 percent of its area. The districts are cooperative organizations existing for a definite period but not to exceed 40 years; they can exercise no powers of local legislation; membership is voluntary and limited to persons engaged in the livestock business. An unusual provision of the Grass Conservation Act requires districts to lease, at a reasonable rental, all State lands within their boundaries not otherwise disposed of whenever offered to them by the State Board of Land Commissioners; and the Grass Conservation Commission is charged with the duty of requiring the districts' compliance.

Trespass on Public Lands

In some cases, the administration of State and county lands is weakened by a lack of effective methods for dealing with trespass. Both in range and forest areas, public land has often been used without legal sanction. As a result, the landowning agency does not get revenue from its property; the land may be mistreated; and the incentive to obtain the use of public lands by legal means is reduced. To deal with cases of trespass by stockmen under the general trespass laws often requires more time and personnel than the public land agency has available. Moreover, on land renting for only a few cents an acre, the damages recoverable for a few weeks of unauthorized use may be so small that aggressive prosecution is hardly justified.

Prompt and effective action in dealing with trespass is, nevertheless, a requirement of good administration, particularly when a positive land program is in its early stages. Some land-

[11] Soil conservation districts are described in ch. 3.

owning agencies have hired part-time employees to discover trespasses and collect unpaid fees on rentals. These employees are paid a percentage of the increased revenue attributable to their activities including a percentage of rentals collected from persons who formerly made free use of the land and with whom they negotiate leases. In at least one instance, two independent agencies have cooperated in dealing with trespassing stockmen by refusing to grant leases to the trespassers until the claims of both agencies were satisfied. In some cases, statutes provide that trespass on State school and public lands is a misdemeanor punishable by fine or imprisonment or both. Trespass would doubtless be reduced if State legislation provided a legal weapon stronger than the threat of civil action against trespassers on State or county forest, grazing, or similar lands.

REVENUE FROM THE LAND PROGRAM

The financial aspects of public land management often exert much influence on the policies adopted. Where the production of revenue is the sole objective of the land program, public land is usually sold or leased to the highest bidder without regard to land use and conservation. This is often the case when a local unit of government acquires land through tax reversion and is under pressure to find substitutes for vanishing tax revenue. In other circumstances, the public agency may be fortunate enough to be in a position to forego immediate financial gains in exchange for less immediate social returns from a policy of conservation and stabilization. Except public credit agencies which base their land programs on a desire to maintain the book values of their investments during a period of falling land values, State agencies are more often in a position to wait than are minor units of government.

The method of financing public land management will influence, to a certain extent, the disposition of the income from the land. For example, if the management costs are defrayed by direct appropriations, the income may be placed in the general funds of the treasury of the governmental unit making the appropriation. In case the revenue from the land is used to finance management costs, the income is better placed in a special fund. Another arrangement is to provide that either the total revenue, in the event management is financed by appropriations, or the income in excess of management costs in case management is financed out of income, be considered the same as taxes which are collected on similar real property. The distribution of the income from these lands could be in the same proportion as taxes collected for similar uses.

Much of the land that reaches public ownership through the tax-delinquent route is badly depleted. To produce its maximum return, this land will usually require treatment in addition to that supplied by nature. Seeding to grass, tree planting, forest-stand improvement, the establishment of erosion-control structures, and fencing are examples of developments which require cash expenditures but which, in many instances, will yield substantial returns on the investment at some future time. Some developments may be financed on a "pay-as-you-go" basis, but others are often necessary before any revenue is obtained from the land. Where the land is managed by the State, the essential developmental costs can usually be obtained through appropriations, but in most counties where there is a large amount of land in public ownership, the financial position of the county will prevent substantial outlays for a developmental program. In such cases, local units of government might be provided with a system of State grants or other assistance for developing their public lands.

AGENCIES FOR PUBLIC LAND ADMINISTRATION

The competence with which public lands will be administered and managed depends to an important extent upon the agency entrusted with the task. A sound administrative structure is prerequisite to a good public land program. But under different circumstances, equal effectiveness may be obtained from widely varying structures.

TYPES OF AGENCIES

The agencies of the several States range from highly centralized State authorities to government units with no central supervision.

Centralized State Agency

Where the problem of public land management is State-wide and particularly where public lands are largely State-owned, the most obvious solution is to provide a single centralized State agency. Such an agency has authority over all public lands, except lands like parks assigned to conservation departments or other responsible administrative branches of the State governments.

For example, the office of the State Land Commissioner in Arkansas is charged with responsibility for administering all State lands not acquired for a specific public purpose. Another centralized State agency is the Michigan Department of Conservation, consisting of seven members appointed by the Governor and selected "with special reference to their training and experience along the line of one or more of the principal lines of activities vested in the Department of conservation and their ability and fitness to deal therewith." The conservation commission is a policy-making body, and appoints a director of conservation to whom is delegated administrative responsibility. The department administers all State-owned lands, including land acquired for specific purposes.

Also noteworthy is a bill recently introduced in the Mississippi Legislature providing for a State Land Policy Commission consisting of the director of the agricultural experiment station, the director of the agricultural extension service, the State forester, the State director of conservation, the commissioner of agriculture, the commissioner of State lands, and five bona fide farmers appointed by the Governor for 6-year terms. In addition, the Governor is empowered under the bill to invite the Secretary of the United States Department of Agriculture to designate one or more advisory members to serve on the commission. The members of the commission who serve by virtue of their office are to act only in an advisory capacity on policy formation.

Functional or Jurisdictional Land Agencies

In contrast to administration by a single State authority is administration through several independent agencies charged with specific functions or operating within certain jurisdictions. Thus, the State forestry department, the State park commission, and the State wildlife administration might be assigned authority to carry on their particular functions on State-owned lands. Without any centralized agency to determine the use to be made of land, the respective agencies might choose lands which have not been devoted to any specific use and which are suitable for their purposes. Or different functional agencies might conduct their operations on the same lands. For example, a State game commission might take measures to encourage the propagation of wildlife in the same area that was being reforested by the forestry commission.

Elements of such an approach to public land administration are evident in the legislation of some States. There is a clear advantage in utilizing existing agencies in specialized activities; but without definite provision for over-all policy formation unrestrained interagency competition may offer serious handicaps.

County Land Agencies with State Cooperation

A third form of administrative organization utilizes the county governments as administrative units but provides over-all direction through some State cooperation or supervision. An example is the management of county forest reserves under the amendment to the forest crop law of Wisconsin that authorized counties to register tax-forfeited tracts as forest cropland. The State commission passes on the suitability of land submitted for registration, and cooperates with the county in planning its use in order to promote the objectives of the law. The commission also administers the severance tax provisions of the forest crop law, which gives it authority to limit the amount of cutting in order to insure restocking and sustained yield, and provides for State contributions to counties and minor units offsetting reduced tax receipts on land registered under the forest crop law. Thus, the State agency retains considerable control over the management of the forest land, but divides the responsibility for administration with local units, particularly in the case of county-

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owned land entered under forest crop provisions and maintained as county forests.

County Administration Without State Control

In some States, a large part of the public land is managed directly by the county governments without State control other than that provided by general legislation. County lands in South Dakota are thus administered. The declaration of policy in the County Land Administration and Management Act now in force reads as follows:

> It is hereby declared to be the policy of the legislature to provide for the conservation of the land resources of the counties, for the establishment of sound administration and management of county-owned lands in order that these lands may be conserved and the maximum revenue obtained, for the protection of the tax base, and for the encouragement of stable operation of farms and ranches. The board of county commissioners of any county shall have control of the sale, rental and management of real property owned by the county acquired in satisfaction of school fund loan mortgages or through foreclosure, or acquired through tax deed proceedings or in payment of taxes as provided herein.

Such an arrangement encourages local determination of land policies and permits a large degree of flexibility in administration; it is subject to certain disadvantages of decentralization and may put an administrative burden on governmental units in excess of their financial resources.

COORDINATION OF LAND POLICIES

Coordination of public land agencies requires cooperative effort on the part of both State and local units, and should include the Federal Government since Federal lands are often rather extensive in areas with much public land ownership. Coordination may be sought through informal or formal agreements among agencies. There are some instances where two or more public agencies cooperate within a locality, performing some functions in common and helping one another to carry out their respective programs. The possibilities of such cooperation are great and warrant serious consideration particularly where land holdings have similar physical characteristics and are intermingled. Opportunities for cooperation with private owners should also be considered. The practice of making railroad land grants of alternate sections, for instance, has created some situations ideally suited for coordination of the land programs of public and private owners.

State Governments can foster coordination through legislative action. Since the activities of State agencies, of minor units of government, and of quasi-public organizations are based on State laws and are often quite specifically defined, a revision of the statutes may serve to bring their land programs into closer conformity through such means as the State Commissions under the Wisconsin forest crop law and the Montana Grass Conservation Act.

The Federal Government is also in a position to assist in the process of coordination. Under the Taylor Grazing Act, it is possible to bring about considerable uniformity of management on both publicly and privately owned lands. Where most of the public land is in State ownership, the participation of the Federal Government in the administration of the land should be largely advisory; but in regions where Federal ownership is predominant, the situation might well be reversed.

In the last analysis, the extent of coordination of policy that can be achieved by cooperation among public land agencies is limited by the community of interests of the agencies. As some interests may be irreconcilable, it may be more feasible to recommend consolidation of certain groups of agencies without attempting to bring all public land agencies under a common administration. Such a plan would emphasize the group aspects of coordinating administrative policies, rather than stressing public land management as either completely centralized in one agency or completely decentralized.

COORDINATION OF STATE AND LOCAL INTERESTS

Whatever the form of administrative organization adopted and whatever the degree of centralization, a satisfactory program must provide for a balance between State and local interests in the utilization of public lands. Land use has important effects beyond the region in which the lands are located, but the immediate

effect of public land policies is in the localities where they are applied particularly when public land ownership is employed as a means of bringing about basic readjustments in land use. If the use of natural resources is to be reallocated among private operators, local people should have an opportunity to participate in planning the reallocation. The ultimate test of public land management generally lies in its effect on the community in which the lands are located.

A well-balanced land program includes planning and action on both State and local levels. The exact division of responsibility between State and local agencies will naturally differ from State to State. It will depend upon such factors as the governmental unit owning the land, the type of land-managing agencies already developed and the success with which they have operated, the constitutional and legislative provisions for administrative organization, and the general attitude toward the question of centralized authority. In general, it is probable that the States must assume some responsibility for financing protective and developmental programs. As part of this function the State should provide technical assistance in carrying out the program. Foresters, agronomists, economists, and other professional groups needed in planning for public land management probably should be supplied by State agencies.

Equally important functions must be assumed by the citizens of the localities through counties and minor units of government. Even where the land program of a State is based on a central authority, it is possible and desirable to localize policy making and administration to a considerable extent. In certain areas, for instance, local officials should have the responsibility for developing specific programs and procedures for fixing lease rates, allotting use-privileges among individuals, and the like. Much of the administrative work will necessarily be handled at the local level, and county agencies may be best adapted for such work as issuing leases, collecting rentals, supervising land utilization, and handling complaints. The use of cooperative associations to bring about sound land management also belongs at the local level.

The present cooperative land use planning program should serve as a convenient and effective means of developing a basis for better coordination of the programs of the various land management agencies. While such local planning groups as county planning committees include representatives of State or Federal agencies, the essence of the program is decentralized planning and policy making by the people who are closest to the local situation.

THE RELATION OF FEDERAL TO STATE AND LOCAL LAND PROGRAMS

State and county programs of land management and development provide a means of making more effective use of numerous Federal programs for improving State and local conditions. For example, forest and range improvements, the development of recreational facilities, watershed protection and erosion-control measures, fire control, tree planting, noxious-weed control, planting wildlife food and cover, and carrying on game-management and protection activities are among the types of work that may be included in Federal programs on State and county lands. Through work projects the Civilian Conservation Corps and the Work Projects Administration are able to undertake a number of tasks for the development or restoration of public lands. Certain types of assistance in soil conservation measures and erosion control are available from the Soil Conservation Service.

Constructive management and development of State and county lands may be linked up with the management of lands acquired under Federal programs for retirement of submarginal farms under title III of the Bankhead-Jones Farm Tenant Act and previous authorizations. In fact, State programs which prevent the resale or occupancy of submarginal State-owned lands are often essential if the aims of Federal submarginal land retirement programs are to be realized. Consolidation of holdings for State forest purposes may be obtained through exchange arrangements, or furthered by the Fulmer Act, which authorizes purchase of lands by the Federal Government for State forests with a plan for eventual repayment of the principal to the Federal Government.

Interrelation of Measures Affecting Land Use

Chapters 1 to 8 have reviewed legislative measures for dealing with fairly specific, individual land use problems. When such problems exist in complete detachment one from another, a single measure or a very closely related group of measures may be adequate for their solution. But these problems rarely if ever occur in complete detachment one from another: they almost always occur as groups of interconnected problems for which one measure offers only a partial solution.

Why, then, have the various measures been discussed separately? To discuss remedial measures in complex mixtures adapted to each of the innumerable problem situations that exist throughout the country would unduly complicate this report and add seriously to its size. Chapters 1 to 8 have taken up single, apparently separable, legislative measures only in order to simplify the discussion and to parallel the breakdown of legislative programs into single bills. Most actual land use problem situations require a program of related measures to meet the related problems of the area. In such cases, analysis of the problems of the area can be followed by selection from among available legislative tools of just those tools designed for work on the particular difficulties indicated by the analysis.

Interrelated Measures Require Coordinated Administration

The various elements that usually go to make up a program of land use adjustment will generally be enacted singly and will frequently be directed at or will add powers or responsibilities to different existing State agencies. Some means for coordinating the administrative action of the State agencies responsible for the various measures may be necessary if land use adjustment is to be carried out as a unified program. In a given State, one law may relate to work of the forestry commission; others to schools, highways and grants-in-aid; and others to county administration of tax-forfeited land. Teamwork would seem to be essential.

There are at least two devices that should be helpful in obtaining necessary coordination: (1) Grouping certain related functions or agencies under one administrative head, and (2) cooperative planning by agencies operating in the same territory.

(1) Not all the functions and agencies included in a land use adjustment program are susceptible of being grouped or centralized together under one administrative head. But some grouping seems desirable, since it reduces the number of agencies that have to be brought together by other coordinating devices, and generally simplifies the problem of coordination.

(2) A land use adjustment program ordinarily includes measures or agencies that are not directly concerned with land management and use as such. For example, it may be related to measures or agencies of taxation, grants-in-aid, the consolidation or reorganization of local units of government. It will be related to the local governmental jurisdictions in which the lands lie. It may also be related to various activities and agencies of the Federal Government. Cooperative land use planning—by community, county, and State committees representing the respective agencies together with representative

rural people holds the key to this situation. On them sit laymen, State and local officials, and Federal officials. At the grass roots first and then at the State level, the sharing of points of view and the debate over ways and means should lead to the recommendation of well-rounded programs to attack the significant land use and property problems of the area, with each unit of government assigned its appropriate role in the composite program.

Each unit can carry out some phase of a total program better than the others. The Federal Government is in a position to give financial assistance and guidance and because of constitutional limitation the States alone can adopt such land use measures as are discussed in this report, some or all of which are required in every land use problem area in the country; local units of government frequently are the most practical for face to face dealings with land users and residents of the area. Hence a total program should include all units of government in appropriate combination, a combination that can best be worked out in group discussion, such as provided by local and State planning committees.

Typical Uses of Interrelated Measures

Land use adjustment measures, whether adopted singly or in programs, are undertaken to ameliorate social problems that grow out of the way land and water is used, or the way property rights in land and water are distributed and controlled. Legislation has been developed to meet problems in land use, some of which are:

(1) Rural poverty, including low levels of livelihood; insecurity and instability of income, investment, and residence; unemployment.

(2) Destruction or waste of natural resources, including timber depletion, overgrazing, soil erosion, waste of water.

(3) High costs of public services relative to community income and financial distress of local units of government, including high relief charges, grants-in-aid required for schools, roads, etc.; overindebtedness, inability to meet even current operating expenses out of tax revenue.

(4) Flood, silt, and dust damages to both rural and urban values and on properties elsewhere than where the trouble originates.

When any one or any combination of these problems is more or less chronic in an area, the need for public action rooted in a legislative program is indicated. And because use of land and water in ways that are not adjusted to the capacities of the resources is often the source of the trouble, the program frequently takes the form of land use legislation.

An Older Forest Cut-over Area as Found in the Northern Lake States

At the height of the timber harvest there was prosperity and population growth, both of which encouraged the assumption of debts by local governments for the creation and expansion of public facilities. Now timber depletion is reflected in declining employment and reduced tax revenues to meet costs of local government that are relatively high because of excessive indebtedness.

Cut-over lands have been in part disposed of to settlers, settlement has taken place on poor lands and the pattern of settlement is scattered.

All settlement, even on good land in good locations, has to meet the costs of subjugation and is distressed for at least a few years. Settlement on poor land makes for low incomes; tax payments are slow and local governments financially distressed.

Scattered settlement significantly raises per capita costs of public services relative to tax yield; this is followed by further financial distress of local governments and demands for extensive grants-in-aid from outside tax revenues.

Cut-over lands unsold for settlement usually are not managed by the timber operator for future timber crops. With little income from the land and slow sales to settlers, large areas go tax delinquent, further distressing local governments; vast blocks of uncontrolled, unmanaged lands produce little or no socially valuable product and endanger adjacent and intermingled areas under management by public or private bodies.

Distressed local government units are apt to increase tax rates with a resultant increase in nonpayment of taxes. A vicious circle is established that may extend its radius far, before

public opinion or failure to increase government revenue calls a halt.

Local units of government organized to fit the close agricultural settlement that was expected cannot meet the needs of the actual settlement pattern without excessive costs.

Legislative Measures Needed to Meet Problems of this Area

What measures to meet the problems of this area might a unified program of legislative devices contain?

Zoning.—To confine further settlement to better lands or to areas already settled sufficiently to make the rendering of public services reasonably efficient and economical.

Land purchase and exchange.—To remove nonconforming users from areas now zoned against occupancy and to facilitate management of public land areas by acquiring parcels important to management.

Acquisition of good title to tax-forfeited lands.—To empower State or local units of government to take valid, merchantable titles to tax-forfeited lands by a simple, direct, low-cost process.

Public development, management and disposition of tax-forfeited lands.—To resell to new or existing settlers lands in areas adapted to and zoned for settlement, and to manage the remaining lands for establishment of the timber and recreational resources, for their orderly utilization and for income to the government units concerned.

Grant-in-aid program.—To provide grants-in-aid by the State for essential services such as schools and roads and payments by the land-managing agency to the local units of government in lieu of taxes on the lands under public management; grants-in-aid should be so administered as not to encourage existing settlement to remain in areas zoned against settlement or to result in local pressure against such zoning because of cash grants thus foregone.

Changes in structure of local units of government.—To provide for economy in government and betterment in quality of services rendered, particularly by townships and school districts.

The program of measures briefly described includes most of the elements discussed and recommendations advanced in chapters 1, Rural Zoning; 5, The Structure and Function of Rural Local Government; 6, Procedure for Rural Tax-Delinquent Lands; and 8, Management and Development of State and County Lands.

A GRASSLAND-FARMING AREA OF OVEREXPANDED CROP CULTIVATION AS FOUND IN THE NORTHERN GREAT PLAINS

Farming, patterned after humid agriculture but carried out on the Great Plains, has led to the plowing of grasslands not adapted to cropping and to the establishment of a size of farm adapted to crop farming but not to more extensive systems. The result has been low incomes, violently unstable with the weather, plowed areas that should be in grass, and areas in grass subjected to serious overgrazing.

Ownership units of a size predicated on crop farming, with owners widely scattered and of many types, hinders consolidation of control into units adapted to conditions and encourages unregulated exploitation of lands not locally controlled.

Low incomes to local users and low or no incomes to nonresident owners are reflected in nonpayment of taxes and tax delinquency with resultant financial distress of local units of government.

Public services planned, built, and financed when a close pattern of settlement was anticipated, have piled up local governmental debt beyond the capacity of a sparse population and a less intensive system of land use.

Financially distressed local governments are apt to raise rates thus producing some further nonpayment of taxes; the vicious circle continues.

Cultivation of lands not adapted to cultivation and overgrazing of grasslands results in severe erosion from the high wind velocities and torrential rains typical of much of the area; wind and water erosion and flash run-off produce flood and silt damages down the water courses and dust damages in far distant areas.

Legislative Measures Needed to Meet Problems of This Area

What measures to meet the problems of this area might a unified program of legislative devices contain?

Soil conservation districts. To provide a means for consolidating control of the complex, diffuse ownership pattern on grazing lands; to ration the grazing resources thus controlled among possible users under regulations designed to conserve the resource and rehabilitate and stabilize occupancy and use; and to foster conservational use of all lands in the district.

Cooperative grazing associations. May or may not be needed to supplement the soil conservation districts; the district may secure control of the ownership pattern, but place management of some of the grazing lands in the hands of an association of users.

Acquisition of tax-delinquent lands. To enable government to take valid, marketable title to forfeited lands by some simple, direct, low-cost process.

Development, management, and disposition of public lands. To sell to private users those public lands suited to private ownership and to develop and manage the remainder for restoration of grass cover and for orderly utilization through soil conservation districts or grazing associations, and for income for the local governments.

Purchase or exchange of land. To purchase or exchange private lands not suitable for farming but occupied for farming and, further, to facilitate management of other nonfarmed lands controlled and managed by public or quasi-public bodies.

Changes in the structure and function of local units of governments. To adapt local governments, including counties, to the needs that exist for public services under a more extensive system of land use, and to the probable tax yield; and to enable them successfully to assume new responsibilities of land management of the vast lands forfeited for taxes.

Grant-in-aid program. To provide State grants to local units for essential services beyond their power to supply and payments from land managing agencies to the local governments in lieu of tax revenue on the land in public management; such a program must be administered so as not to encourage continued or further settlement in areas not adapted to settlement.

This program of measures includes most of the elements discussed and recommendations advanced in chapters 3, Soil Conservation Districts; 5, The Structure and Function of Rural Local Government; 6, Procedure for Rural Tax Delinquent Lands; 7, State Land Purchase for Land Use Adjustment; and 8, Management and Development of State and County Lands.

A DISTRESSED IRRIGATED-GRAZING AREA AS FOUND IN THE INTERMOUNTAIN REGION

In such an area the problems to be met and the measures useful in meeting them are practically the same as those described for the grassland-farming areas of the Great Plains. But here, in addition, there is the added complication of water use, water rights, and irrigated farming in conjunction with range use. In these areas the waste of water resources, not from ignorance of proper methods alone but because of the ownership pattern of water rights, is a problem additional to those found in the Great Plains. Then, too, the ownership of vast areas of land by the Federal Government introduces the need for close association between it and State and local governments in their land-management policies in order to coordinate their policies and better fit them to the needs of the users.

Water rights distributed without regard to the character and quality of the lands to which the water is to be applied and without regard to the uses to which it will be put frequently result in greater use and loss of water than is necessary or socially desirable. Water and land used in better relation to one another would increase production and raise the incomes and well-being of the dependent population.

Additional Legislative Measures Needed to Meet Problems of This Area

Thus, besides the measures described to ameliorate the problems in the grassland-farming area, another legislative tool will probably

be needed to get at the problems of the distressed irrigation-grazing area.

Modified rules of appropriation.—To get greater productivity from combined land and water resources and less loss of water and consequent larger incomes and greater tax-yielding capacity.

Subsurface water law.—To regulate rights to and use of subsurface waters (if they are important in the area).

In the irrigation-grazing area, the tools described in chapters 3, 5, and 7 need to be supplemented by the tools suggested in chapter 2, State Water Laws.

A HIGHLY UNSTABLE TENANCY AREA AS FOUND IN THE COTTON BELT

All conservation efforts have been hindered more or less by the widespread insecurity of farm tenants. Present leasing arrangements, 1 year in length and based on the production of cash crops, discourage the tenant from planning a long-time conservation farm program and reduce the tenant's participation in conservation activities.

The cost of high mobility of tenant farmers not only affects tenants and their landlords in terms of direct expenses of moving but also prevents the full utilization of farm resources which might be achieved under more stable tenure conditions. A large proportion of the tenants remaining on farms do not have assurance of occupying the farm beyond any one year and consequently their position as regards planning is much the same as if they actually moved.

Tenant mobility and insecurity not only reduce the tenant's income and his participation in conservation activities, but also disrupt and retard the development and effectiveness of public services through poor financial and personal cooperation.

High rent and credit charges may result in soil exploitation and lower incomes, with ultimate loss to both landlord and tenant.

Legislative Measures Needed to Meet Problems of This Area

What measures to meet the problems of this area might a unified program of legislative devices contain?

Improvement of lease contracts.—To facilitate—

(1) Written agricultural leases;

(2) Removal of improvements made by tenant at termination of lease, or compensation of tenant by landlord for specific unexhausted improvements made by tenant;

(3) Compensation of landlord by tenant for deterioration or damages due to factors over which the tenant has control;

(4) Termination of leases only after notice has been given 6 months in advance;

(5) Automatic renewal of agricultural leases;

(6) Settlement of landlord-tenant differences by local arbitration boards composed of representatives of both parties.

Management and disposition of public lands.—To provide for sale of certain public lands to qualified tenant farmers and renting public lands to tenant farmers under long-time agreements.

Soil conservation districts. To encourage the incorporation of conservation provisions into rental contracts used by tenants and landlords in the district.

Grant-in-aid program. To provide grants-in-aid from the State to local units of government for essential public services, chiefly education and health, which these local governmental units are not able to furnish.

This program of measures includes most of the elements discussed and recommendations advanced in chapters 3, Soil Conservation Districts; 4, Farm Tenancy Law; 5, The Structure and Function of Rural Local Government; 8, Management and Development of State and County Lands.

MEASURES THAT ARE ALWAYS COMPLEMENTARY

In most areas, because of the nature of the problems found, many of the legislative devices mentioned in this report will be needed in some form or combination. But there are certain measures that should always be used in combination regardless of area or problem; if one is used the other should always accompany it.

Zoning; submarginal land purchase.—Zoning is frequently an effective and useful device to prevent settlement taking place in areas where the public feels settlement would be socially detrimental. Zoning may also provide for

termination of nonconforming uses, for instance, Colorado and Pennsylvania laws. To date it has been used only to prevent new settlement; settlement already present remaining undisturbed. Zoning an area against settlement, therefore, takes care of the future rather than the present; it neither provides for management of the public lands in the area nor eliminates the costly scattered settlement that may be already there.

On the other hand, land purchase can take care of the present, but it can cover the future only at great expense under a land-purchase program. Only scattered tracts of occupied land may need to be acquired to accomplish the principal current goals of land use adjustment, but so long as large areas of unoccupied private lands exist within the area, purchase and management policy of all lands may be required to insure against further settlement. Far greater sums for purchase may by that fact be needed than are required to purchase the currently occupied lands.

In such cases zoning and purchase make perfect complementary measures. Either is better off for the presence of the other; neither is fully effective alone except at unwarranted expense. Zoning legislation should always be accompanied by collateral legislation authorizing public land purchase, and legislation for public land purchase should usually be accompanied by legislation for zoning.

Zoning; management of public lands; changes in the structure and function of local government. Zoning and public land management not only change the pattern of settlement and the intensity of land use and hence raise problems as to the organization of local governments, but are also new forms of government action, and necessarily raise additional questions as to the function of local governments. To be complete, a legislative program for zoning and public land management must give consideration to its effect on local government and provide for appropriate reconstitution through complementary legislative measures.

Acquisition of tax-delinquent land; management and development of public land. In any area where chronic tax delinquency is a problem, those two measures are but two phases of a single action. Getting a valid marketable title simply and quickly is a necessity if the public agency is to have adequate control over use and disposition. But possessing a good title in itself merely sets the stage for the real public responsibility of classifying and then rehabilitating, managing, or selling the lands thus acquired. Only by managing its public resources, many of which will have been obtained through the tax-forfeiture route, will the public secure the potential benefits the resources have to offer. When tax delinquency is a chronic problem, there is need for legislative means to acquire good, secure titles; once the Government stands possessed of land resources, their usefulness, to be realized, requires legislative devices for classification, development, management, and disposition.

Selected Bibliography

References included in this Selected Bibliography are arranged under each chapter heading in order of importance, according to the views of the compilers. It is recognized that differences of opinion as to their relative usefulness may exist.

Chapter 1.—Rural Zoning

(1) Wehrwein, George S.
ENACTMENT AND ADMINISTRATION OF RURAL COUNTY ZONING ORDINANCES. Jour. Farm Econ. 18 (3): 508-552. August 1936.

(2) Hendrickson, Clarence Irving.
RURAL ZONING. 38 pp. Washington, D. C. United States Bureau of Agricultural Economics. 1935. [Mimeographed.]

(3) Walker, Herman, Jr.
SOME CONSIDERATIONS IN SUPPORT OF THE CONSTITUTIONALITY OF RURAL ZONING AS A POLICE POWER MEASURE. U. S. Resettlement Administration, Land Use Planning Pub. II, 48 pp. Washington, D. C. 1936. [Mimeographed.]

(4) Penn, R. J., Musbach, W. F., and Clark, W. C.
POSSIBILITIES OF RURAL ZONING IN EIGHTH DAKOTA, A STUDY IN BORDER COUNTY. S. Dak. Agr. Expt. Sta. Bul. 345, 23 pp. Brookings. 1940.

(5) Rowlands, W. A., and Trenk, F. B.
RURAL ZONING ORDINANCES IN WISCONSIN. Wis. Agr. Col. Ext. Cir. 281, 40 pp. Madison. 1936.

(6) Jesness, Oscar B., and Newell, Reynold I.
A PROGRAM FOR LAND USE IN NORTHERN MINNESOTA, A TYPE STUDY IN LAND UTILIZATION. 338 pp. Minneapolis. 1935.

(7) Rowlands, Walter A.
COUNTY ZONING FOR AGRICULTURE, FORESTRY AND RECREATION IN WISCONSIN. Jour. Land and Pub. Util. Econ. 9 (3): 272-282. August 1933.

(8) Wisconsin, College of Agriculture, Extension Service.
MAKING THE BEST USE OF WISCONSIN LAND THROUGH ZONING. Wis. Agr. Col. Ext. Serv. Spec. Cir. 19 pp. Madison. 1934.

(9) Hershey, Vivian.
RURAL ZONING IN PENNSYLVANIA. 18 pp. Washington, D. C. United States Bureau of Agricultural Economics. 1938. [Mimeographed.]

(10) United States Bureau of Agricultural Economics.
A STUDY OF THE POSSIBILITIES OF RURAL ZONING AS AN INSTRUMENT FOR IMPROVING LAND USE IN HAMILTON COUNTY, TENNESSEE. 31 pp. Knoxville, Tenn. 1939. [Processed.]
In cooperation with Tennessee Valley Authority, Department of Regional Planning Studies and Department of Forestry Relations; Tennessee State Planning Commission; and Hamilton County Regional Planning Commission.

(11) Musbach, W. F., and Williams, M. C.
RURAL ZONING IN MINNESOTA. Jour. Land and Pub. Util. Econ. 16 (1): 105-109. February 1940.

(12) Wehrwein, George S., and Baker, J. A.
RELOCATION OF NON-CONFORMING LAND USERS OF THE ZONED COUNTIES IN WISCONSIN. Jour. Land and Pub. Util. Econ. 12 (3): 248-255. August 1936.

Chapter 2. State Water Laws

(13) Chandler, Adley Edward.
ELEMENTS OF WESTERN WATER LAW. 150 pp. San Francisco. 1913.

(14) Baker, Donald M., and Conklind, Harold.
WATER SUPPLY AND UTILIZATION; AN OUTLINE OF HYDROLOGY FROM THE VIEWPOINT OF THE ARID SECTION OF THE UNITED STATES TOGETHER WITH AN OUTLINE OF WATER LAW AND ITS ADMINISTRATION AS IT HAS DEVELOPED IN THE ARID STATES. 495 pp. New York, London. 1930.

(15) Hadsell, S. T.
WATER RIGHTS FOR IRRIGATION; PRINCIPLES AND PROCEDURE FOR ENGINEERS. 176 pp. Stanford University, Calif. 1936.

(16) Kinney, Clesson S.
A TREATISE ON THE LAW OF IRRIGATION, INCLUDING THE LAW OF WATER RIGHTS AND THE DOCTRINE OF APPROPRIATION OF WATERS, AS THE SAME ARE ESTABLISHED AND APPLIED IN THE STATES AND TERRITORIES OF THE ARID AND SEMI-ARID REGIONS OF THE UNITED STATES; AND ALSO INCLUDING THE STATUTES OF THE RESPECTIVE STATES AND TERRITORIES, AND DECISIONS OF THE COURTS RELATING TO THOSE SUBJECTS. 793 pp. Washington, D. C. 1894. Ed. 2 rev. & enl. 4 v. San Francisco. 1912.

(17) Thompson, D. C., and Fiedler, A. G.
SOME PROBLEMS RELATING TO LEGAL CONTROL OF USE OF UNDERGROUND WATERS. Amer. Water Works Assoc. Journ. 30: 1049-1091. 1938.

(18) Wiel, Samuel Charles.
WATER RIGHTS IN THE WESTERN STATES; THE LAW OF PRIOR APPROPRIATION OF WATER AS APPLIED ALONE IN SOME JURISDICTIONS, AND AS, IN OTHERS, CONFINED TO THE PUBLIC DOMAIN, WITH THE COMMON LAW OF RIPARIAN RIGHTS FOR WATERS UPON PRIVATE LANDS. Federal, California and Oregon statutes in full, with digest of statutes of Alaska, Arizona, Colorado, Hawaii, Idaho, Kansas, Montana, Nebraska, Nevada, New Mexico, North Dakota, Oklahoma, Oregon, Philippine Islands, South Dakota, Texas, Utah, Washington and Wyoming. Ed. 3, rev. and enl. 3 v. San Francisco. 1911.

(19) Wiel, Samuel C.
FIFTY YEARS OF WATER LAW. Harvard Law Rev. 50: 292-304. 1936.

(20) Corbett, Harold.
ADMINISTRATIVE CONTROL OF UNDERGROUND WATERS. Amer. Soc. Civil Engin. Trans. [1937.]

(21) Farnham, Henry Payne.
THE LAW OF WATERS AND WATER RIGHTS; INTERNATIONAL, STATE, MUNICIPAL AND INDIVIDUAL INCLUDING IRRIGATION, DRAINAGE, AND MUNICIPAL WATER SUPPLY. 3 v. Rochester. 1904.

(22) Fly, James S.
ROLE OF THE FEDERAL GOVERNMENT IN THE CONSERVATION AND UTILIZATION OF WATER RESOURCES. Univ. Pennsylvania Law Rev. 86: 274-294. 1938.

(23) Hutchins, Wells A.
SELECTED PROBLEMS IN THE LAW OF WATER RIGHTS IN THE WEST. U. S. Department of Agriculture. 250 pp. 1939.

(24) Lewis, Joseph R.
A TREATISE ON THE LAW OF IRRIGATION. St. Paul. 526 pp. 1901.

(25) Gould, John Melville.
A TREATISE ON THE LAW OF WATER. Ed. 3, 956 pp. 1900.

Chapter 3.—Soil Conservation Districts

(26) United States Department of Agriculture.
SOILS AND MEN. YEARBOOK OF AGRICULTURE 1938. 1232 pp. Washington, D. C., U. S. Govt. Print. Off. [1938.]

(27) United States Soil Conservation Service.
SOIL CONSERVATION. November 1937, July 1938, August 1938.

(28) United States Department of Agriculture.
SOIL CONSERVATION DISTRICTS FOR EROSION CONTROL. Misc. Publ. 293. 19 pp. Washington, D. C. 1937.

(29) United States Soil Conservation Service.
A STANDARD STATE SOIL CONSERVATION DISTRICTS LAW. Prepared at the suggestion of representatives of a number of states. 64 pp. Washington, D. C. 1936.

(30) United States Soil Conservation Service.
1939 REPORT OF THE CHIEF OF THE SOIL CONSERVATION SERVICE. 78 pp. Washington, D. C. [1940.]

(31) State Soil Conservation Districts Laws.
General and Local Laws Alabama 1939, Act 147; Acts of Arkansas 1937, Act 197; California Assembly Bill No. 60, approved February 23, 1940; Session Laws of Colorado 1937, c. 241, as amended Session Laws of Colorado 1939, c. 160; Laws of Florida 1937, c. 18144, as amended Laws of Florida 1939, c. 19473; Georgia Laws 1937, Part I, Title IV, p. 377; Session Laws Idaho 1939, c. 200; Laws of Illinois 1937, p. 10, as amended Laws of Illinois 1939, p. 83; Laws of Indiana 1937, c. 232; Acts Regular Session 48 G. A. Iowa, c. 92; Laws of Kansas 1937, c. 5; Kentucky Acts 1940, c. 8; Acts State of Louisiana 1938, Act No. 370; Laws of Maryland 1937, c. 437; Public Acts of Michigan 1937, No. 297; Laws of Minnesota 1937, c. 441; General Laws of Mississippi 1938, c. 253; Laws of Montana 1939, c. 72; Laws of Nebraska 1937, c. 8; Statutes of Nevada 1937, c. 212; Laws of New Jersey 1937, c. 139; Laws of New Mexico 1939, c. 163; Laws of New York 1940, c. 727; Public Laws of North Carolina 1937 Reg. Sess., c. 393, as amended Public Laws of North Carolina 1939 Reg. Sess., c. 341; Laws of North Dakota 1937, c. 9, as amended Laws of North Dakota 1939, c. 6; Session Laws of Oklahoma 1936–1937, c. 38, art. 4, p. 235; Oregon Laws 1939, c. 555; Laws of Pennsylvania 1937, No. 557, as amended Laws of Pennsylvania 1939, No. 366; Acts of South Carolina 1937, No. 182; Laws of South Dakota 1937, c. 19; Public Acts of Tennessee 1939, c. 197; Texas General Laws 1939, c. 3;

Laws of Utah 1937, c. 116; Laws of Vermont 1939, No. 246; Acts of Virginia 1938, c. 394; Laws of Washington 1939, c. 187; Acts West Virginia Legislature 1939, c. 5; Laws of Wisconsin 1937, c. 341, as amended Laws of Wisconsin 1939, c. 323, c. 532.

Chapter 4.—Farm Tenancy Law

(32) United States Special Committee on Farm Tenancy.
FARM TENANCY; REPORT OF THE PRESIDENT'S COMMITTEE. 108 pp. Washington, D. C., U. S. Govt. Print. Off. February 1937.

(33) Iowa State Planning Board. Farm Tenancy Committee.
REPORT AND RECOMMENDATIONS OF THE FARM TENANCY COMMITTEE. 63 pp. Des Moines. 1938.

(34) Spencer, Aubrey John.
THE AGRICULTURAL HOLDINGS ACT, 1923; WITH EXPLANATORY NOTES AND GENERAL FORMS. ALSO TENANT RIGHT VALUATIONS AND COMPENSATION; ARBITRATIONS UNDER THE ACT, AND CUSTOMS OF THE COUNTRY, AND THE STATUTORY RULES AND REGULATIONS MADE BY THE MINISTER OF AGRICULTURE AND FISHERIES UNDER THE ACT, AND THE COUNTY COURT RULES AND FORMS RELATING THERETO. Ed. 8, 326 pp. London. 1931.

(35) Coleman, William J., and Hinkley, H. Alfred.
LEGAL ASPECTS OF LANDLORD-TENANT RELATIONSHIPS IN OKLAHOMA. Okla. Agr. Expt. Sta. Bul. 241, 47 pp. Stillwater. August 1940.

(36) Hannah, H. W., and Ackerman, Joseph.
LEGAL ASPECTS OF FARM TENANCY IN ILLINOIS. Ill. Agr. Expt. Sta. Bul. 465, pp. 239-273. Urbana. April 1940.

(37) Dickerson, John H.
PROPOSED ADJUSTMENTS IN THE FARM TENANCY SYSTEM IN MISSOURI. Mo. Agr. Expt. Sta. Res. Bul. 270, 63 pp. Columbia. December 1937.

(38) Moore, H. R.
SOME LEGAL ASPECTS OF LANDLORD-TENANT RELATIONSHIPS IN OHIO. Ohio State Univ. Dept. Rural Econ. Mimeogr. Bul. 119, 25 pp. Columbus. 1939.

(39) Northwest Regional Council.
A REPORT ON SOME LEGAL ASPECTS OF FARM TENANCY IN OREGON AND WASHINGTON. 41 pp. Portland, Oreg. 1939. [Mimeographed.]

(40) Harris, Marshall; Cotton, Albert H., and Schinkele, Rainer.
FARM TENURE IN IOWA. V. SOME LEGAL ASPECTS OF LANDLORD-TENANT RELATIONSHIPS. Iowa Agr. Expt. Sta. Bul. 371, 63 pp. Ames. 1938.

(41) Harris, Marshall.
COMPENSATION AS A MEANS OF IMPROVING THE FARM TENANCY SYSTEM. U. S. Resettlement Admin. Land Use Planning Pub. 14, 109 pp. Washington, D. C. 1937. [Processed.]

(42) Harris, Marshall D., and Stevenson, Douglas F.
SCOTLAND'S ACTIVITY IN IMPROVING FARM TENANCY. U. S. Resettlement Admin. Land Policy Circ., pp. 10-33. February 1936.

(43) Harris, Marshall D.
AGRICULTURAL LANDLORD-TENANT RELATIONS IN ENGLAND AND WALES. U. S. Resettl. Admin., Land Util. Div., Land Use Planning Sec., Land Use Planning Pub. 4, 63 pp. Washington, D. C. 1936. [Mimeographed.]

(44) Harris, Marshall.
A SUBSTITUTE ADJUSTMENT IN THE FARM TENANCY SYSTEM. Journ. Farm Econ. 19 (4): 892-900. November 1937.

(45) Harris, Marshall.
LEGAL BARRIERS THAT HINDER IMPROVED TENANCY RELATIONS. Southwest. Social Sci. Quart., 21 (1): 66-75. June 1940.

(46) FARM TENANCY. Law and Contemporary Problems 4 (4): 423-575. October 1937. [Consists of nine articles.]

(47) Tiffany, Herbert Thorndike.
LAW OF LANDLORD AND TENANT. 2 v. Chicago. 1912.

(48) Noyes, C. Reinold.
THE INSTITUTION OF PROPERTY; A STUDY OF THE DEVELOPMENT, SUBSTANCE, AND ARRANGEMENT OF THE SYSTEM OF PROPERTY IN ANGLO-AMERICAN LAW. 648 pp. New York, Toronto. 1936.

(49) State Farm Tenancy Laws. Iowa Ch. 235, Laws of 1939. Arkansas Act No. 331, Laws of 1939. Kentucky Ch. 11, Laws of 1940. South Carolina H. Res. 1893, Acts of 1940. Texas Revised Statutes of 1925, Art. 5222. *Culberson* v. *Abbott*, 118 Tex. 491, 18 S. W. (2d) 585.

Chapter 5. The Structure and Function of Rural Local Government

(50) Alvin, Henry F., and Mortimer, Elmar L.
PRINCIPLES AND PROCEDURES IN THE ORGANIZATION OF SATISFACTORY LOCAL SCHOOL UNITS. U. S. Off. Ed. Bul. 1938, No. 2, 164 pp. 1939.

(51) Groves, Harold M.
FINANCING GOVERNMENT. 777 pp. New York. [1939.]

(52) Hansen, Peter L., Haggerty, John J., and Voelker, Stanley.
LANDUSE ADJUSTMENT AND THE COUNTY FISCAL PROBLEM, BUTTES COUNTY, SOUTH DAKOTA. 34 pp. U. S. Bur. Agr. Econ., Washington, D. C. 1939.

(53) Hinkley, Russell John.
STATE GRANTS-IN-AID. 221 pp. Albany. 1935. [New York State Tax Commission Special Report, No. 9.]

(54) Jensen, Jens Peter.
PROPERTY TAXATION IN THE UNITED STATES. 532 pp. Chicago [1931.] (Half-title: Chicago University Dept. of Economics. Studies in Economics.)

(55) Lancaster, Lane W.
GOVERNMENT IN RURAL AMERICA. 416 pp. New York. 1937.

(56) Millspaugh, Arthur C.
LOCAL DEMOCRACY AND CRIME CONTROL. 275 pp. Washington, D. C. 1936. (Inst. for Govt. Res. Studies in Administration No. 32.)

(57) New York State Commission to Revise Tax Laws.
PT. 6. REORGANIZATION OF LOCAL GOVERNMENT IN NEW YORK STATE. 695 pp. 1935.

Chapter 6. Procedure for Rural Tax Delinquent Lands

(58) Allen, H. E.
TAX COLLECTION PROCEDURE; LAND USE IMPERATIVES AND ADMINISTRATIVE PROBLEMS. 46 pp. U. S. Bur. Agr. Econ., Washington, D. C. Law and Contemporary Problems. 1939.

(59) The Collection of Real Property Taxes. A symposium, Law and Contemporary Problems. June, 1936.

(60) Frye, Arnold.
THE TAX FORFEITURE PROCEDURE PROBLEM A SOLUTION. New York State Conf. Mayors and Other Munic. Officials. Proc. 1938: pp. 100-108.

(61) Groves, Harold M.
FINANCING GOVERNMENT. 777 pp. New York. 1939.

(62) Jensen, Jens P.
PROPERTY TAXATION IN THE UNITED STATES. 532 pp. Chicago. 1931. (Half-title: Chicago University, Dept. of Economics. Studies in Economics.)

(63) National Municipal League, Committee on a Model Tax Collection Law.
A MODEL REAL PROPERTY TAX COLLECTION LAW. Report . . . Natl. Munic. Rev. Sup. 24 (30): 390-396. May 1935.

(64) National Association of Assessing Officers.
ASSESSMENT PRINCIPLES. Final Report Rev. Ed., 106 pp. Chicago. 1939.

(65) Silverherz, Joseph D.
THE ASSESSMENT OF REAL PROPERTY IN THE UNITED STATES. 396 pp. Albany. 1936. (New York State Tax Commission Special Report No. 10.)

Chapter 7. State Land Purchase for Land Use Adjustment

(66) United States National Resources Board, Land Planning Committee.
MALADJUSTMENTS IN LAND USE IN THE UNITED STATES. Pt. 6. 55 pp. Washington, D. C., U. S. Govt. Print. Off. 1935.

(67) United States National Resources Planning Board.
LAND COMMITTEE PUBLIC LAND ACQUISITION IN A NATIONAL LAND-USE PROGRAM. Report. Pt. 1, Rural lands. 25 pp. Washington, D. C., U. S. Govt. Print. Off. 1940.

Chapter 8.—Management and Development of State and County Lands

(68) Penn, R. J., and Loomer, C. W.
COUNTY LAND MANAGEMENT IN NORTHWESTERN SOUTH DAKOTA. S. Dak. Agr. Expt. Sta. Bul. 336, 51 pp. Brookings. 1938.

(69) Ward, Ralph E.
ADMINISTRATION OF COUNTY-OWNED LAND IN SOUTH DAKOTA: WITH SPECIAL REFERENCE TO PERKINS COUNTY. 46 pp. Lincoln, Nebr. U. S. Bur. Agr. Econ. 1940. [Mimeographed.]

(70) Wooten, E. O.
THE PUBLIC DOMAIN OF NEVADA AND FACTORS AFFECTING ITS USE. U. S. Dept. Agr. Tech. Bul. 301, 52 pp. Washington, D. C. 1932.

(71) Marshall, James H., and Voelker, Stanley W.
LAND USE ADJUSTMENT IN THE BUFFALO CREEK GRAZING DISTRICT, YELLOWSTONE COUNTY, MONTANA. 59 pp. Washington, D. C. U. S. Bur. Agr. Econ. (L. U. 6) 1940.

(72) A PROGRAM FOR CHRONICALLY TAX-DELINQUENT AND TAX-REVERTED LAND. Part VII of the Supplementary Report of the Land Planning Committee to the National Resources Board. 1935.

(73) Westbrook, R. B.
TAX DELINQUENCY AND COUNTY OWNERSHIP OF LAND IN SOUTH DAKOTA. S. Dak. Agr. Expt. Sta. Bul. 322, 63 pp. Brookings. 1938.

(74) Damschen, Arthur, and Stanbery, V. B.
MANAGEMENT OF TAX-REVERTED LANDS IN OREGON. Portland, Oreg. 95 pp. Oregon State Planning Board. 1938. [Processed.]

(75) Wager, Paul W.
UTILIZATION OF REVERTED TAX-DELINQUENT LAND IN RURAL AREAS. Law and Contemporary Problems, 3 (3) pp. 453-460. 1936.

(76) Wisconsin State Conservation Dept.
THE COUNTY FORESTS OF WISCONSIN. 32 pp. Madison. 1938.

(77) Hibbard, Benjamin H.
A HISTORY OF THE PUBLIC LAND POLICIES. 591 pp. New York. 1924.

(78) United States Great Plains Committee.
THE FUTURE OF THE GREAT PLAINS. Report of the Great Plains Committee. 194 pp. Washington, D. C., U. S. Govt. Print. Off. 1936.

(79) Johnson, V. W., Henderson, Sidney, and Marshall, James H.
A land program for forest county, Wisconsin, based on an analysis of land-use problems. U. S. Dept. Agr. Tech. Bul. 687. Washington, D. C. 1939.

(80) Ely, Richard T., and Wehrwein, George S.
Land economics. 512 pp. New York. 1940. (Land economics series.)

(81) United States Forest Service.
The western range; letter from the Secretary of Agriculture transmitting in response to Senate Resolution No. 289 a report on the western range—a great but neglected natural resource. 74th Cong., 2d sess., Senate Doc. 199, 620 pp. Washington, D. C. 1936.

(82) United States National Resources Planning Board, Land Committee.
Public land acquisition in a national land-use program, . . . Report . . . Pt. I. Rural Lands, 25 pp. Washington, D. C., U. S. Govt. Print. Off. 1940.